

SCHEDULE 7 LANDS

1. DEFINITIONS

In this Schedule 7, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“**Charge**” means any charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature whatsoever, including any claims of a Governmental Authority;

“**Field Locations**” has the meaning set out in Appendix 4A [Services Specifications];

“**Lands**” means the right-of-way owned or controlled by the Authority in which a portion of the NG-KIH System will be constructed, all Site Locations and all Field Locations;

“**License**” has the meaning set out in Section 2.1(a) of this Schedule 7; and

“**Site Locations**” means each of the site locations more particularly described in Appendix 7A [Site Locations].

2. AUTHORITY’S OBLIGATIONS AND REPRESENTATIONS

2.1 Grant of License Over Lands

(a) From the Effective Date until the later of:

(1) the Termination Date; and

(2) the date the Authority no longer requires Project Co to provide the transitional services described in Section 14.3(a) of this Project Agreement,

the Authority shall grant or shall cause to be granted to Project Co a non-exclusive license of use and access to, on, under and over the Lands and the NG-KIH System to the extent required by Project Co to carry out the Project in accordance with this Project Agreement (the “**License**”).

(b) For clarity, the Authority will be responsible for ensuring that it has or will have such rights and interests in and to the Lands sufficient to permit the grant of the License free and clear of all encumbrances, restrictions or limitations, except for any encumbrances, restrictions or limitations which do not adversely affect, financially or otherwise, the License and the ability of Project Co to perform any of its obligations under this Project Agreement, including the ability to conduct the Design or Construction or perform the Services or System Refresh as contemplated by this Project Agreement. Project Co will be entitled to claim a Compensation Event to the extent that the Authority fails to provide access to the Lands in accordance with the License, whether as a result of the Authority failing to obtain and maintain rights and interests in and to the Lands sufficient to permit the grant of the License as contemplated in Section 2.1(a) or otherwise.

- (c) With respect to all Site Locations, the Authority will, during both the Construction Period and the Operating Period, be responsible for:
- (1) obtaining, maintaining and, as applicable, renewing any permits, consents, approvals or other authorizations required from any Governmental Authority related to zoning;
 - (2) providing all primary power and backup power and, if applicable, water;
 - (3) providing all building maintenance, janitorial services and HVAC break/fix and maintenance;
 - (4) performing all landscaping, weed abatement and snow removal; and
 - (5) providing locks, gates, security and fencing of the Site Location,
- in any case, as are required by Project Co to carry out the Project in accordance with this Project Agreement.
- (d) In consideration for the License granted in Section 2.1(a), Project Co will carry out the Design and Construction, subject to and in accordance with this Project Agreement.
- (e) Project Co may, for the same purposes described in Section 2.1(a), grant a sub-license to any Project Co Person, provided that any such sub-license will be subject to, and terminate upon, termination of the License.

2.2 Terms Affecting License Grant

Without limiting the other provisions of this Schedule 7, the following terms and conditions apply to the License:

- (a) no legal demise or other interest in land, and no interest in the NG-KIH System or any other improvements, is granted to Project Co or created by this Project Agreement;
- (b) the License is non-exclusive and no right to exclusive possession of the Lands or the NG-KIH System is granted to Project Co;
- (c) subject to Section 7.10 of Schedule 2 [Design and Construction Protocols], the Authority will be entitled at any time and from time to time to grant to Authority Persons and any other persons, including contractors and the general public, access to the Lands and the NG-KIH System; and
- (d) the Authority will ensure that Project Co has access to the Lands as required in accordance with the Site Access Plan.

3. PROJECT CO'S OBLIGATIONS AND ACKNOWLEDGMENTS

3.1 As Is Where Is

Subject to the provisions of Section 4.1 of this Schedule 7 and Section 8 (Supervening Events) of this Project Agreement, Project Co accepts the Lands and the License on an "as is, where is" basis.

3.2 Project Co Not to Encumber

Project Co will not, without the consent of the Authority:

- (a) grant or permit any Charge affecting or against the Lands or the NG-KIH System; or
- (b) do or omit to do, or cause, suffer or permit to be done or omitted to be done by any Project Co Person, anything that would result in any Charge against or affecting the Lands, the NG-KIH System or any asset, matter or thing that may be required to be delivered or transferred to the Authority on the Termination Date pursuant to Section 14.2 of this Project Agreement,

and will, at its own expense, promptly discharge and remove, or cause to be discharged and removed, any such Charge.

3.3 No Restriction on Authority Use or Development

Project Co acknowledges that the Authority may from time to time without restriction use, develop or re-develop, or permit the use, development or re-development of, the Lands or any portion thereof (including by way of subdivision) for any purpose and by any Person. To the extent such use, development or re-development adversely interferes with the License or adversely interferes with Project Co's ability to carry out the Design, Construction, Services and System Refresh, the Authority will initiate a Change to address such interference.

3.4 Title to NG-KIH System, Lands and Improvements

Neither Project Co nor any Project Co Person will acquire any property interest in or title to the NG-KIH System, the Lands or any other improvements to the Lands. As between Project Co, any Project Co Person and the Authority, title to and ownership of the NG-KIH System, the Lands and all other improvements to the Lands will at all times be vested in the Authority.

3.5 Ad Valorem Taxes, Franchise Fees and Telecommunications Taxes

The Authority acknowledges that none of the Authority, Project Co or any Project Co Person is subject to ad valorem taxes, franchise fees or telecommunications taxes, or payments in lieu of ad valorem taxes, franchise fees or telecommunications taxes, in respect of the Lands or the NG-KIH System. The Authority shall, at its own cost, provide or cause to be provided such information, documentation and administrative assistance as Project Co may request and as the Authority may reasonably be able to provide if any ad valorem taxes, franchise fees or telecommunications taxes, or payments in lieu of ad valorem taxes, franchise fees or telecommunications taxes, are levied against Project Co or any Project Co Person by any Governmental Authority in connection with the Lands or the NG-KIH System.

4. HAZARDOUS SUBSTANCES

4.1 Responsibility

Notwithstanding any other provision of this Project Agreement, Project Co will not be responsible for any Hazardous Substances on, in, under or adjacent to the Lands or any cost, expense or claim arising therefrom, other than any Project Co Hazardous Substances.

4.2 Process upon Discovery of Hazardous Substances

Upon the discovery of any Hazardous Substances, Project Co shall immediately inform the Authority and shall comply, and ensure compliance by all Project Co Persons, with applicable Law:

- (a) subject to Section 4.2(b), at the Authority's cost in respect of the discovery or exacerbation of:
 - (1) Hazardous Substances located in, on, below or that have migrated to the Lands; and
 - (2) Hazardous Substances located in, on, below or that have migrated to any other location at which any aspect of the Project is performed, but only to the extent that Project Co's Direct Losses related thereto exceed \$200,000 in the aggregate over the Term; and
- (b) at its own cost in respect of any Project Co Hazardous Substances.

Except to the extent required to prevent or mitigate an Emergency or to comply with applicable Law, Project Co shall not undertake any significant work in respect of any Hazardous Substances for which the Authority is responsible pursuant to Section 4.2(a) until the Authority has been given a reasonable opportunity to review the nature and extent of the matter and has instructed Project Co to proceed with such work.

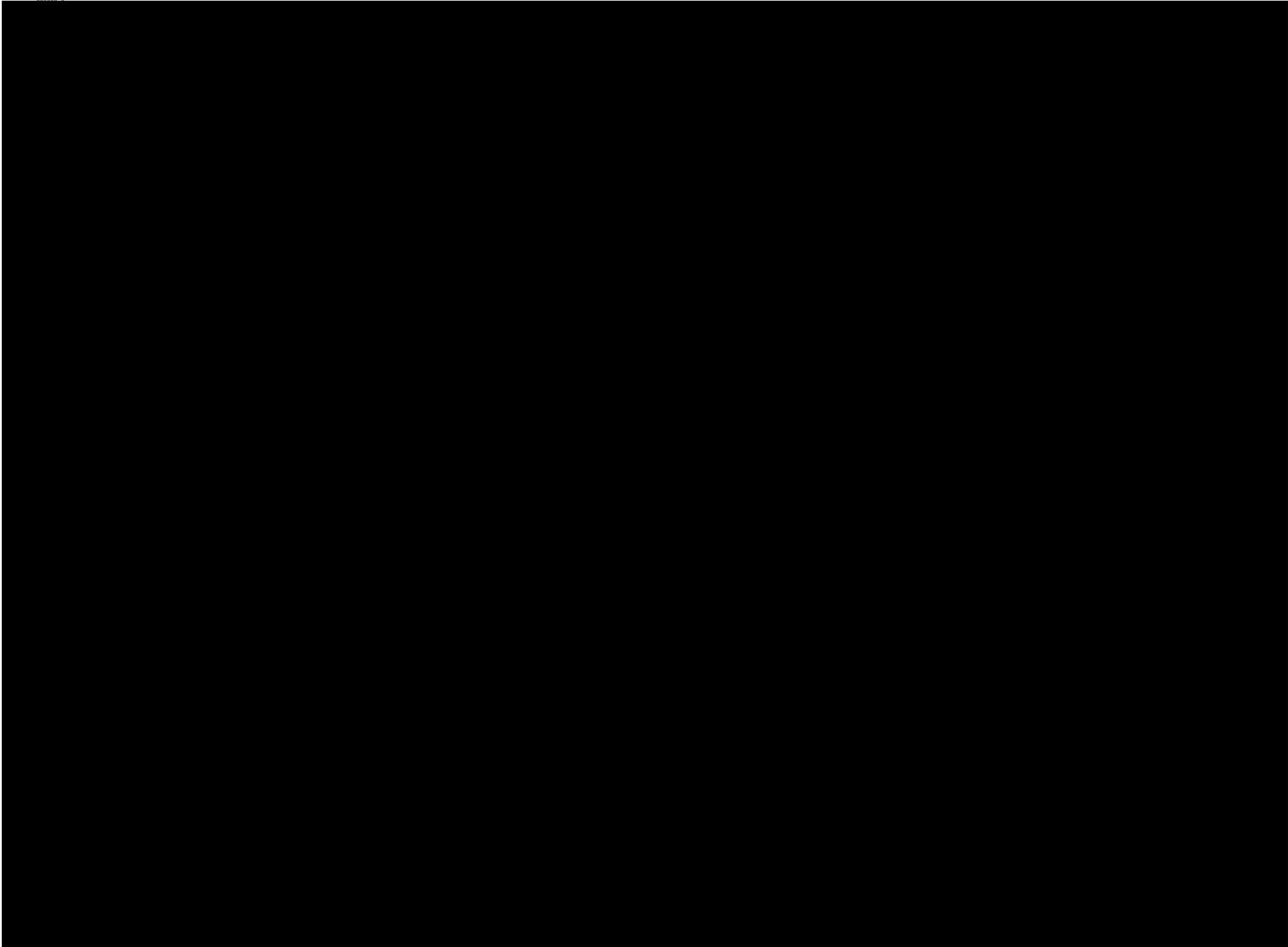
In the event that the Authority wishes Project Co to perform any additional actions in respect of any Hazardous Substances for which the Authority is responsible pursuant to Section 4.2(a), the Authority shall issue an instruction to Project Co specifying such actions and Project Co shall, acting as agent for the Authority, promptly and diligently comply with such instruction at the Authority's cost.

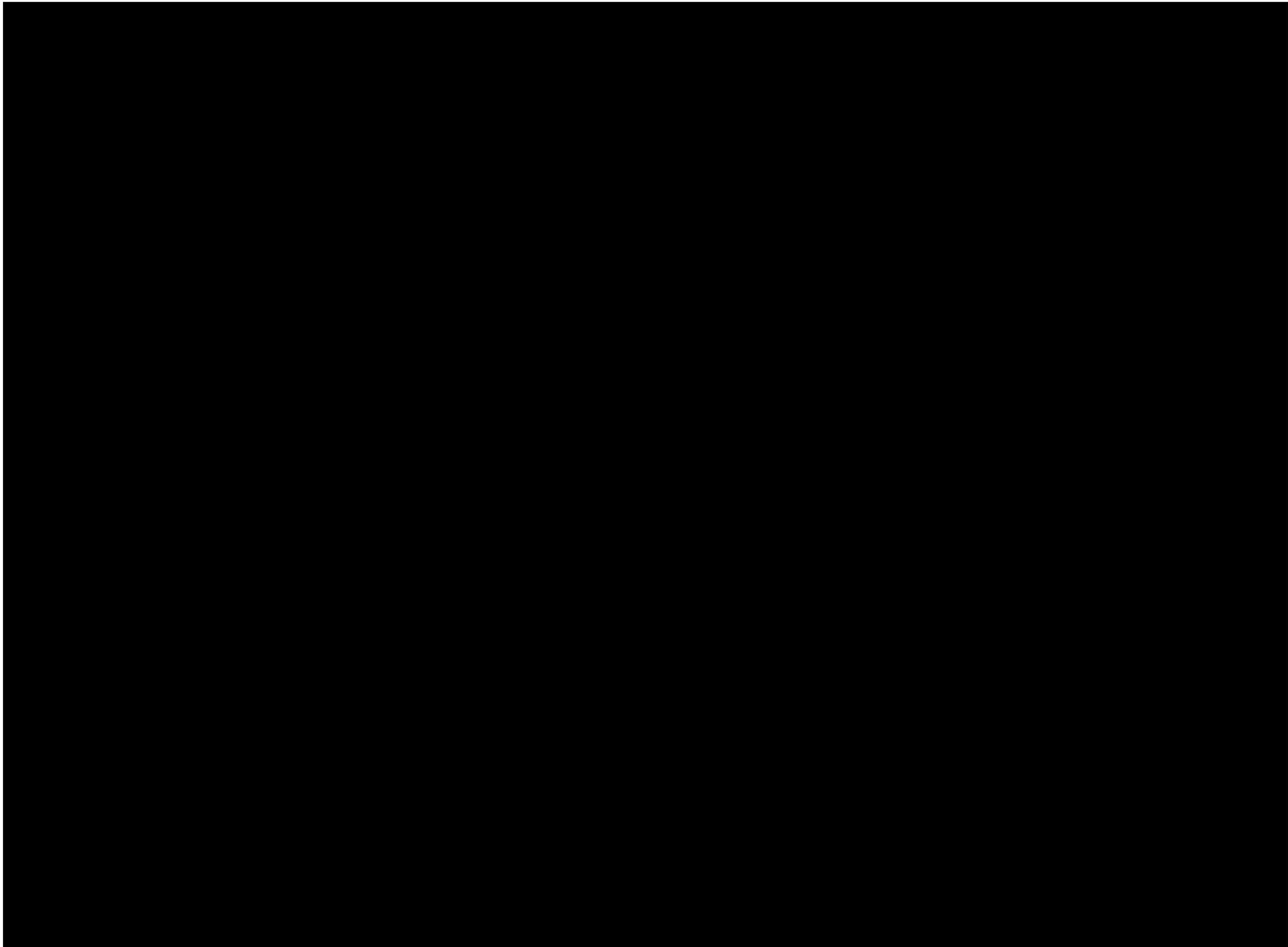
4.3 Restrictions on Use

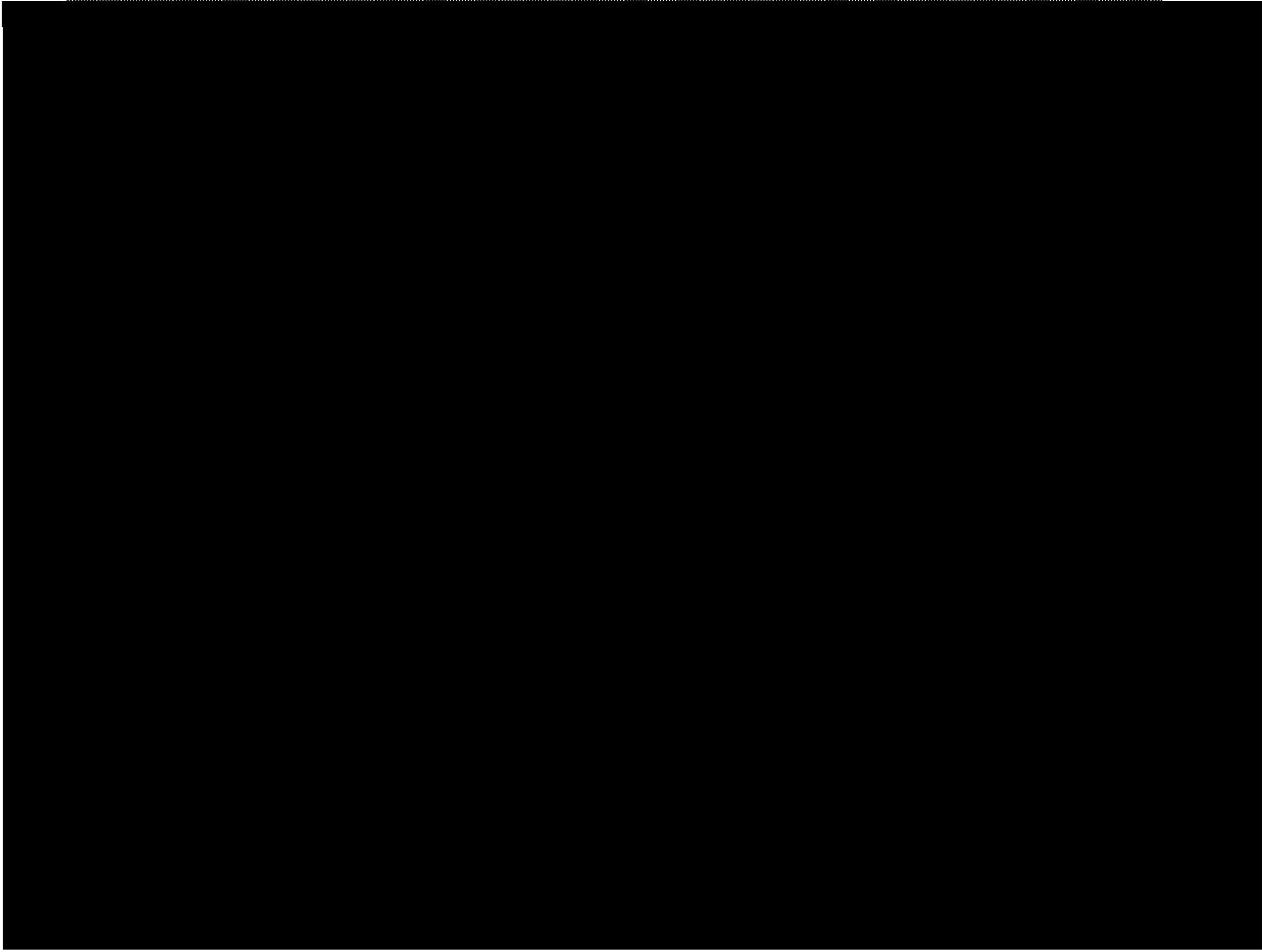
Unless otherwise expressly required or permitted under this Project Agreement, Project Co will not install, use or store on the Lands or adjacent property any materials, equipment or apparatus, the installation, use or storage of which is likely to cause or in fact causes the generation, accumulation or migration of any Hazardous Substance in contravention of any applicable Law. Without limiting the generality of the foregoing, Project Co will not use the Lands to dispose of, handle or treat any Hazardous Substances, in a manner that would cause the Lands, or any adjacent property, to become a contaminated site under applicable Law.

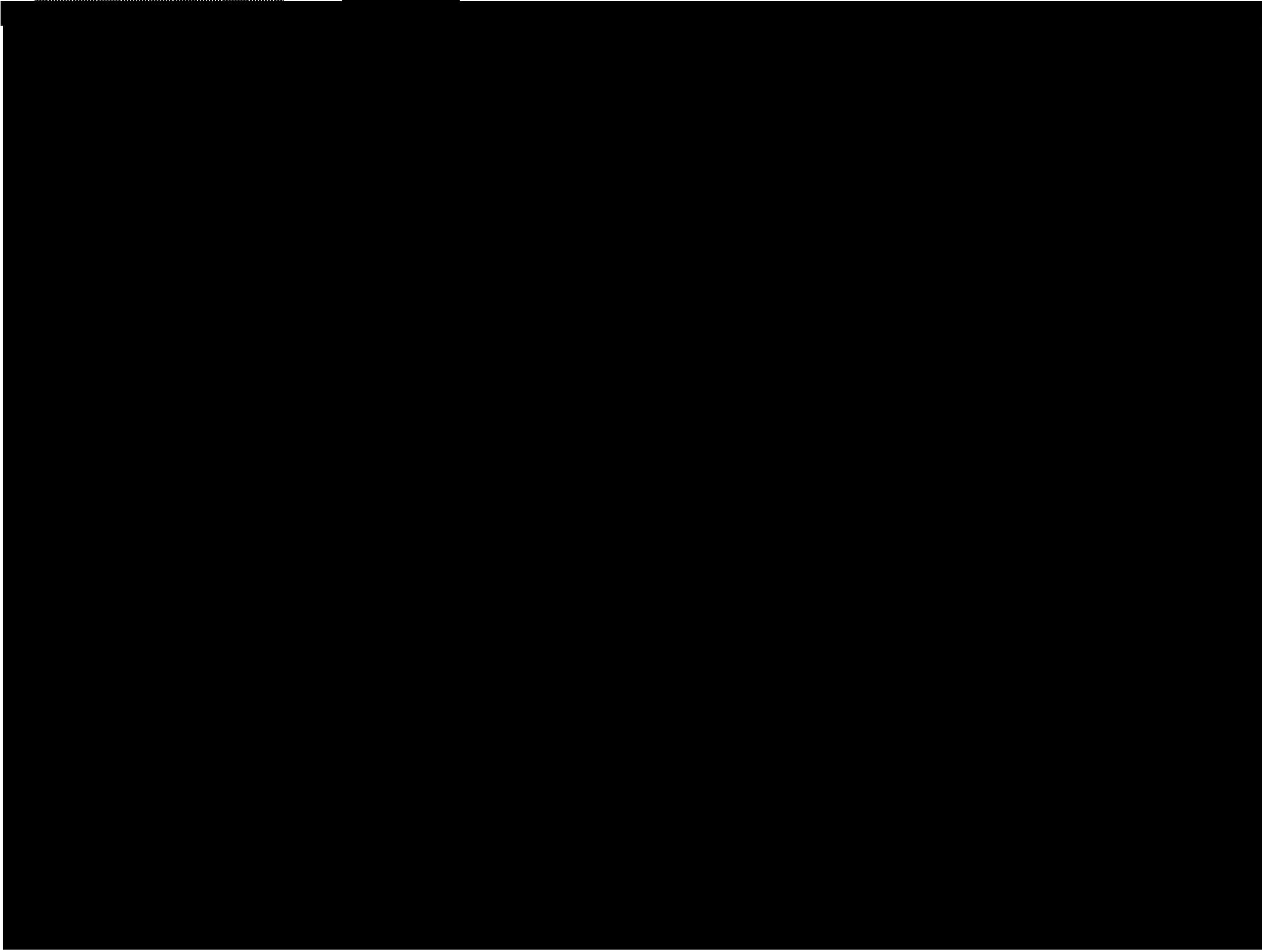
**APPENDIX 7A
SITE LOCATIONS**

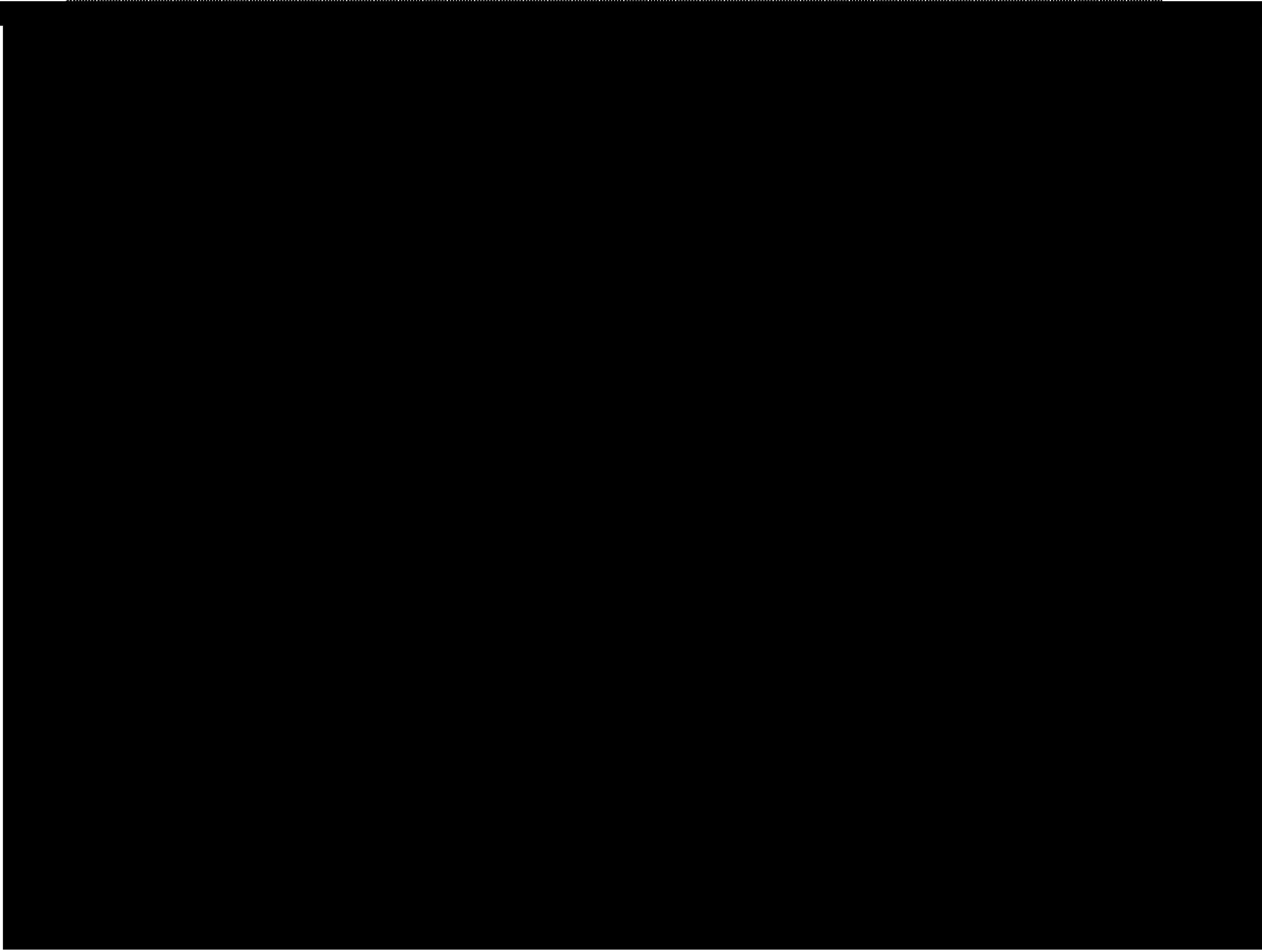
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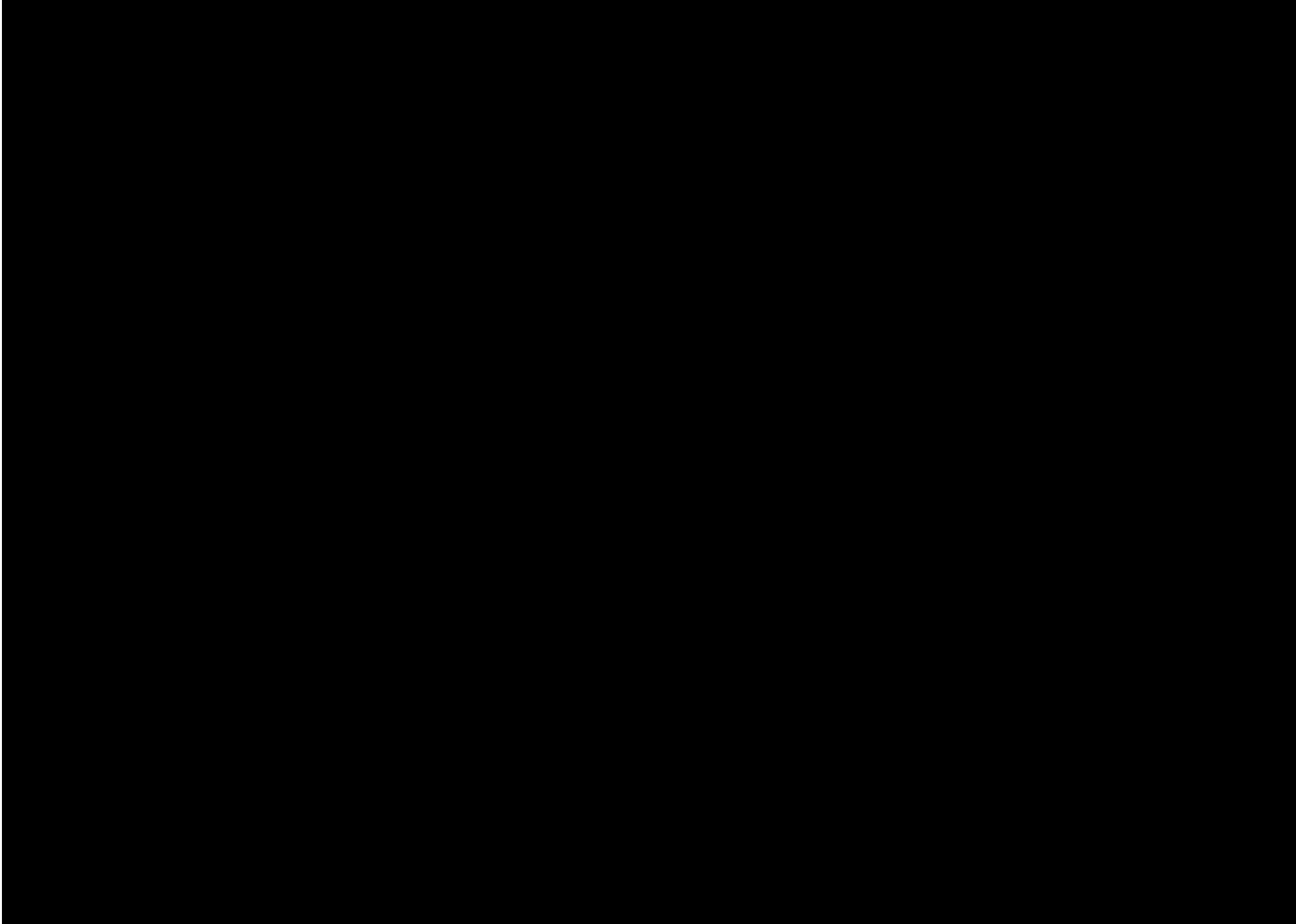


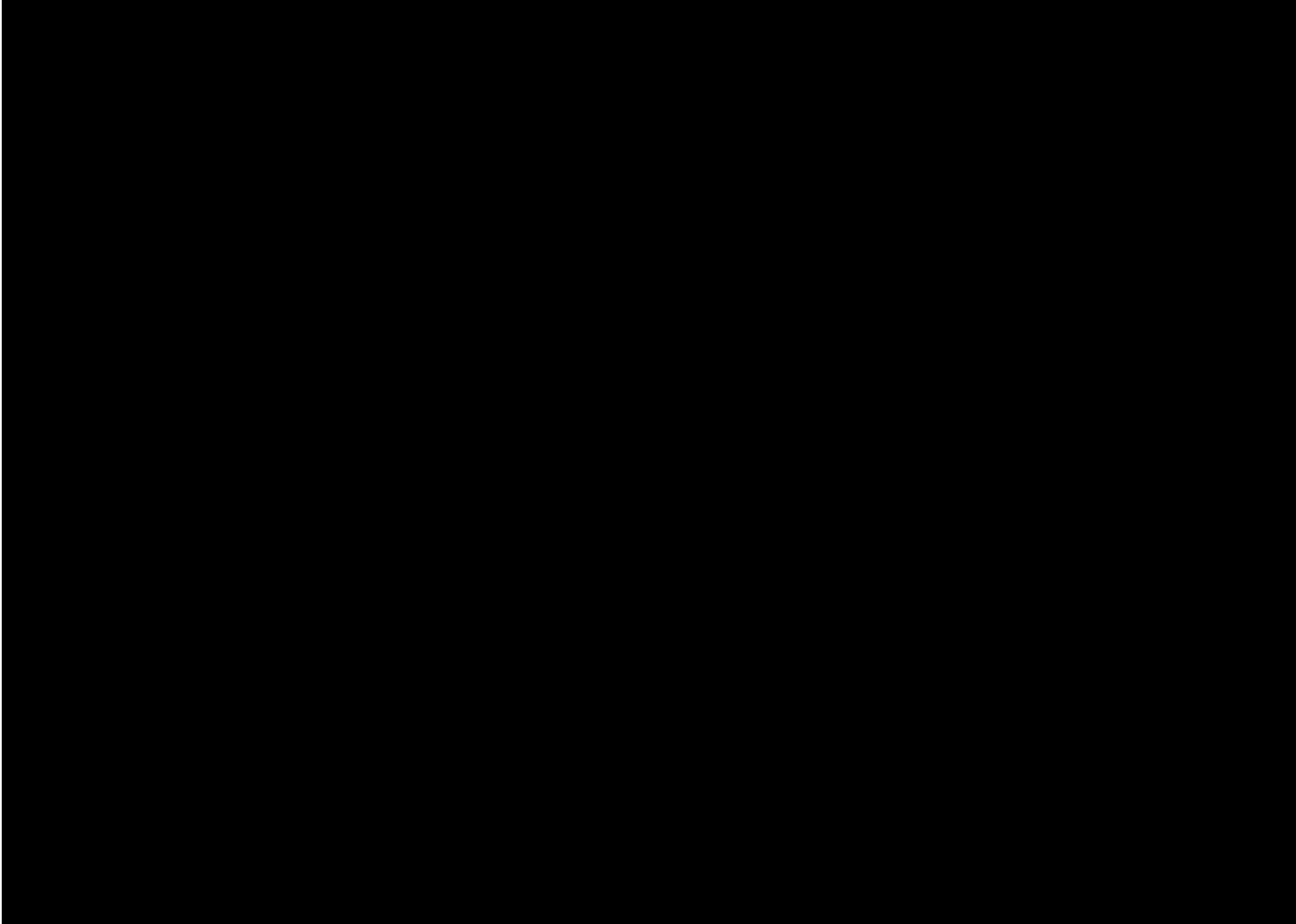


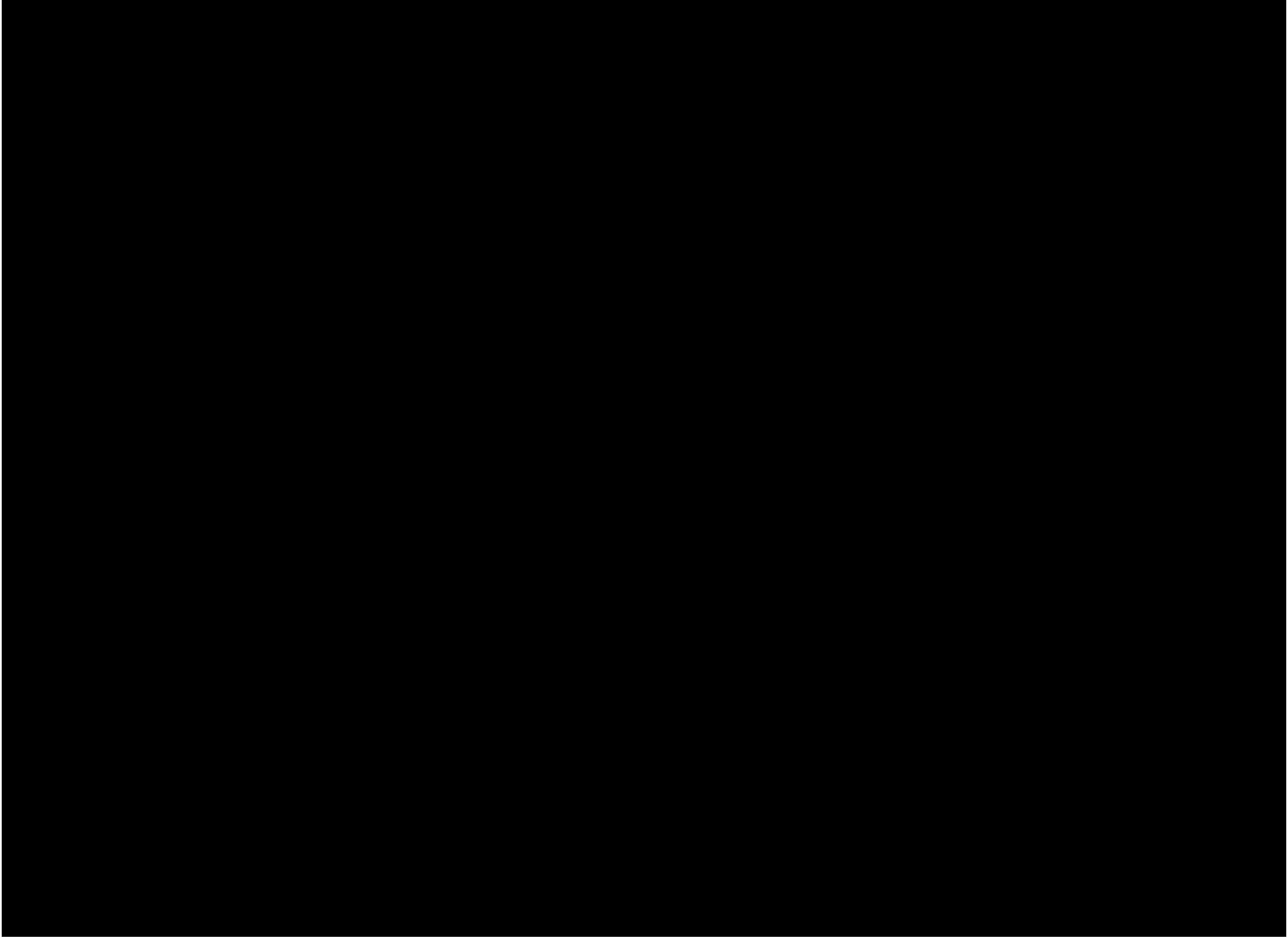


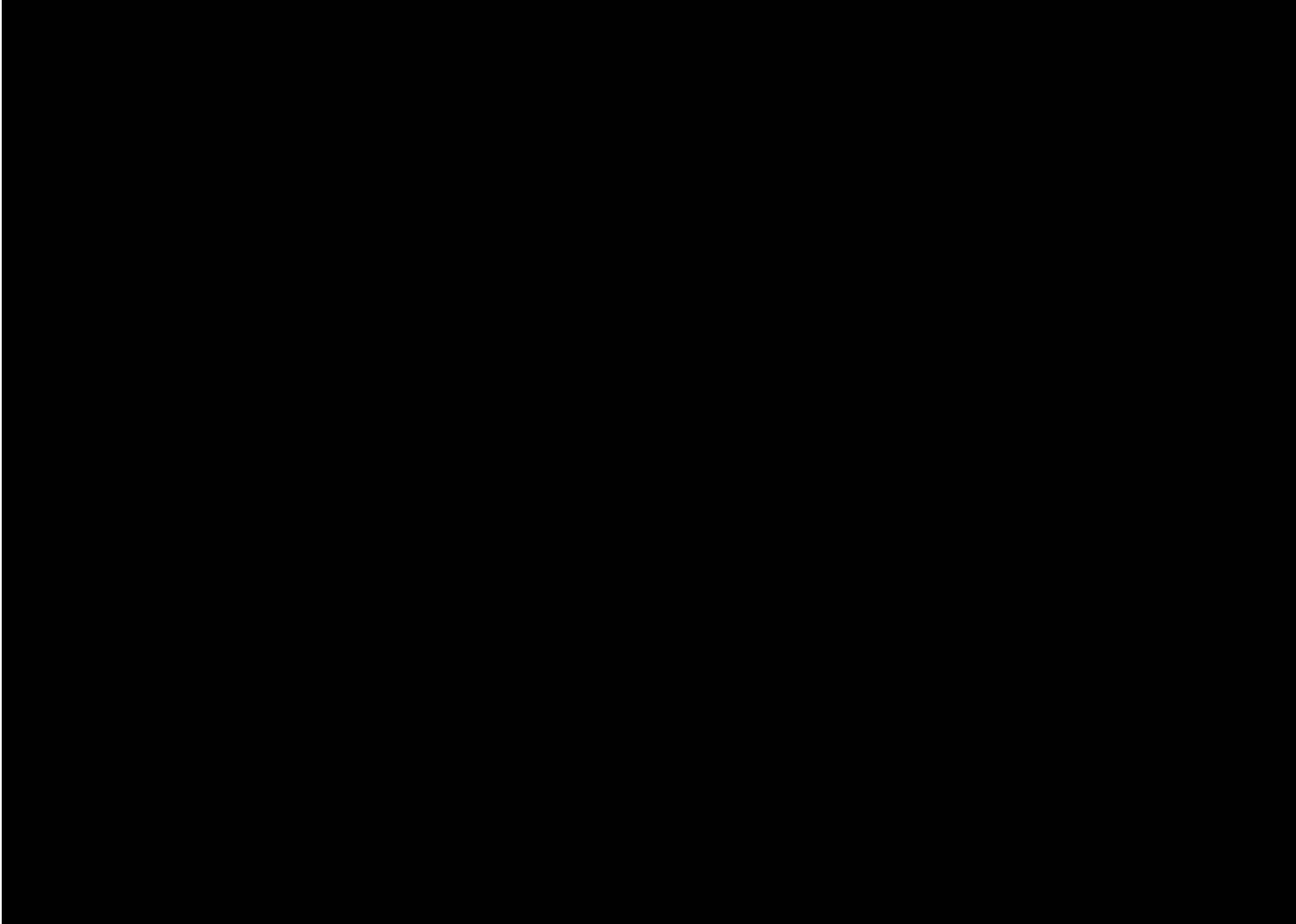


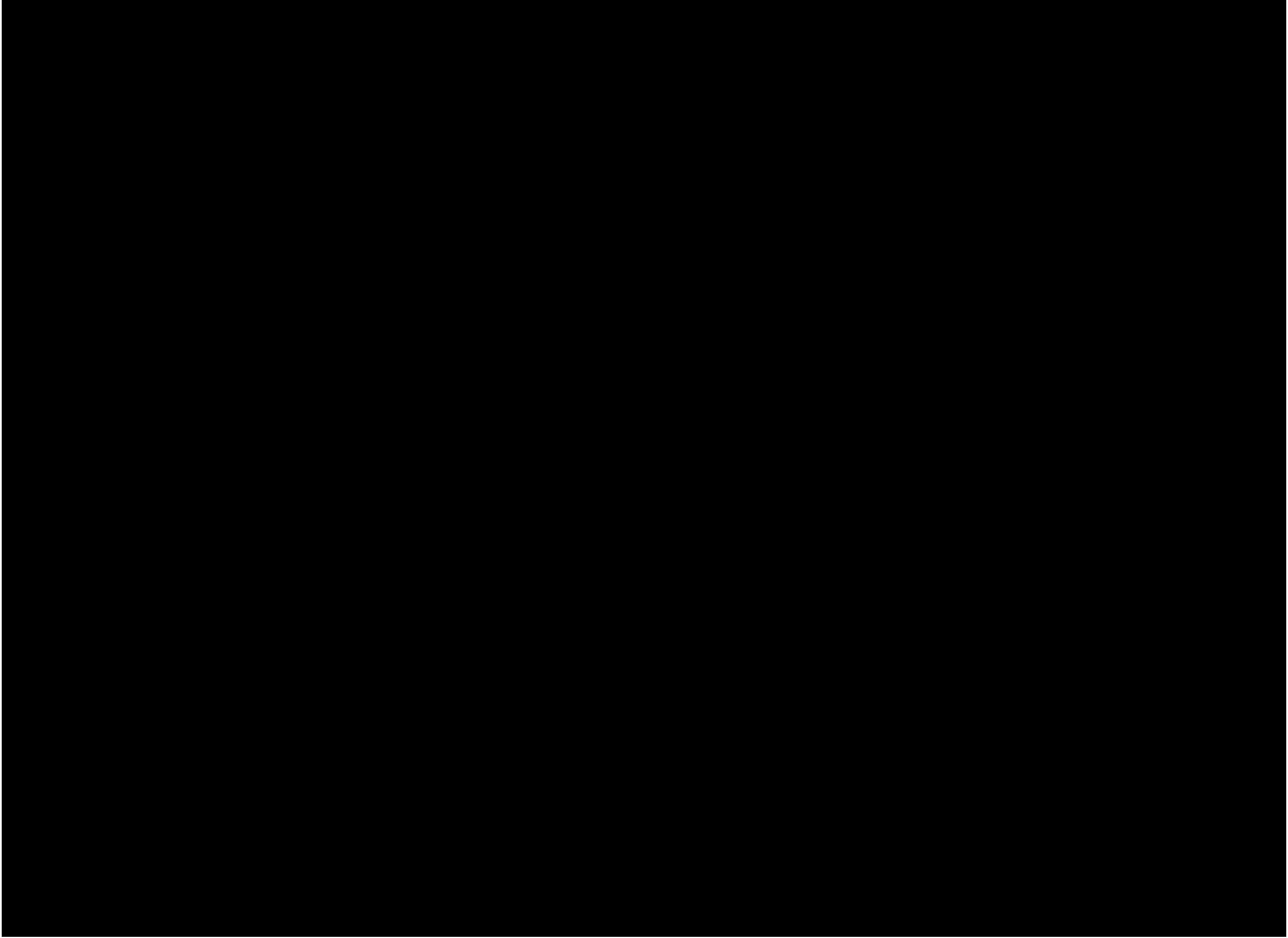


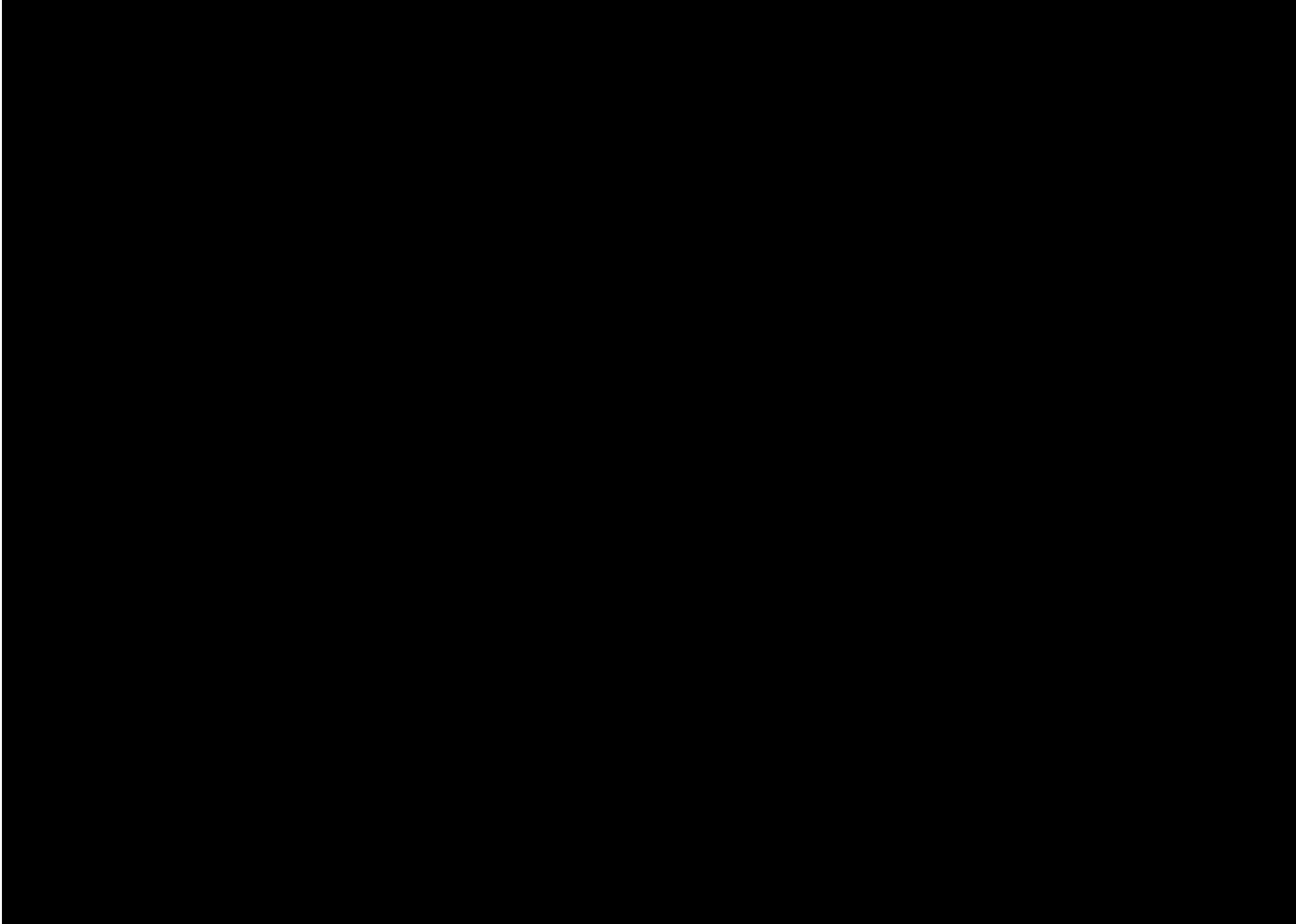


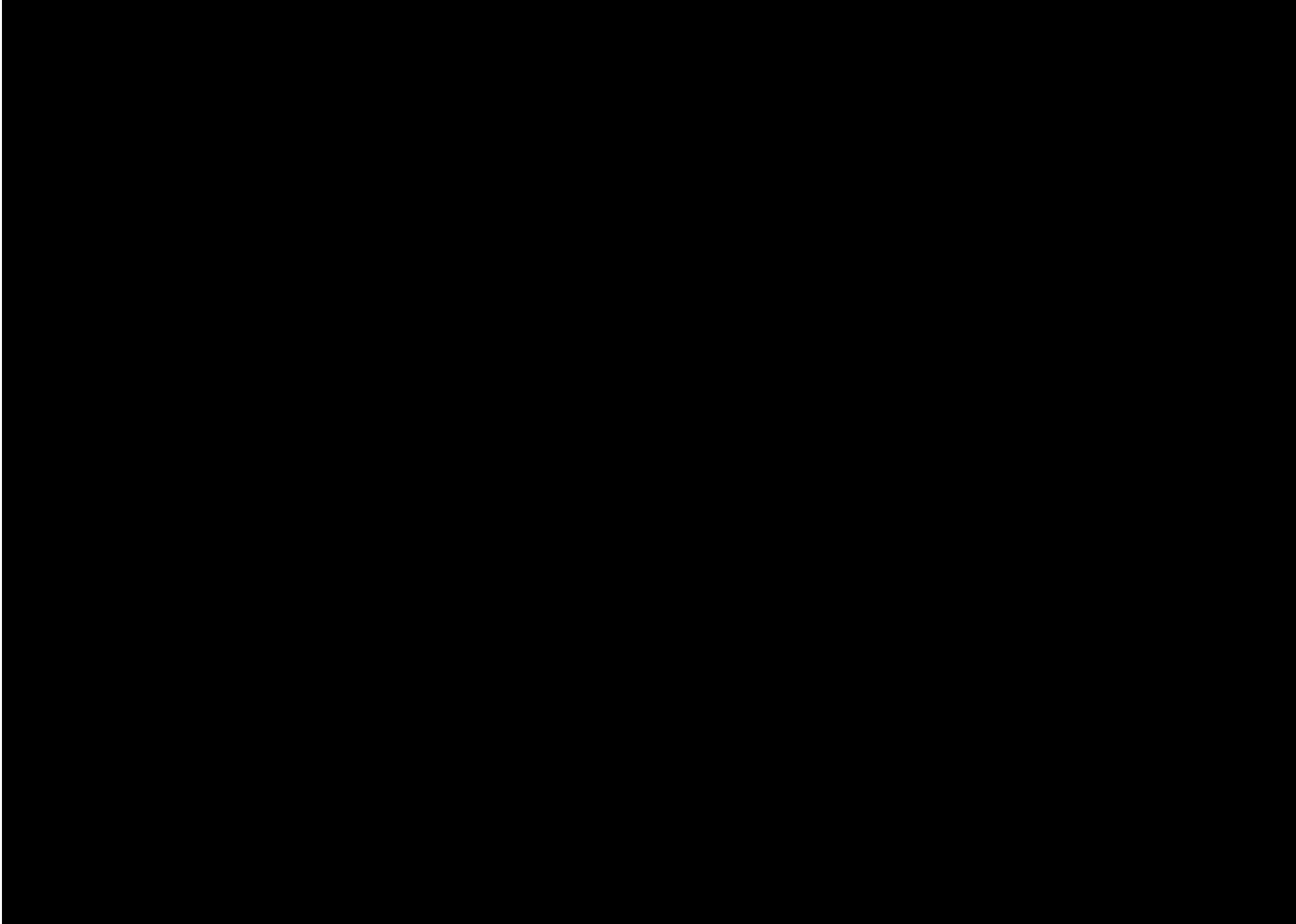




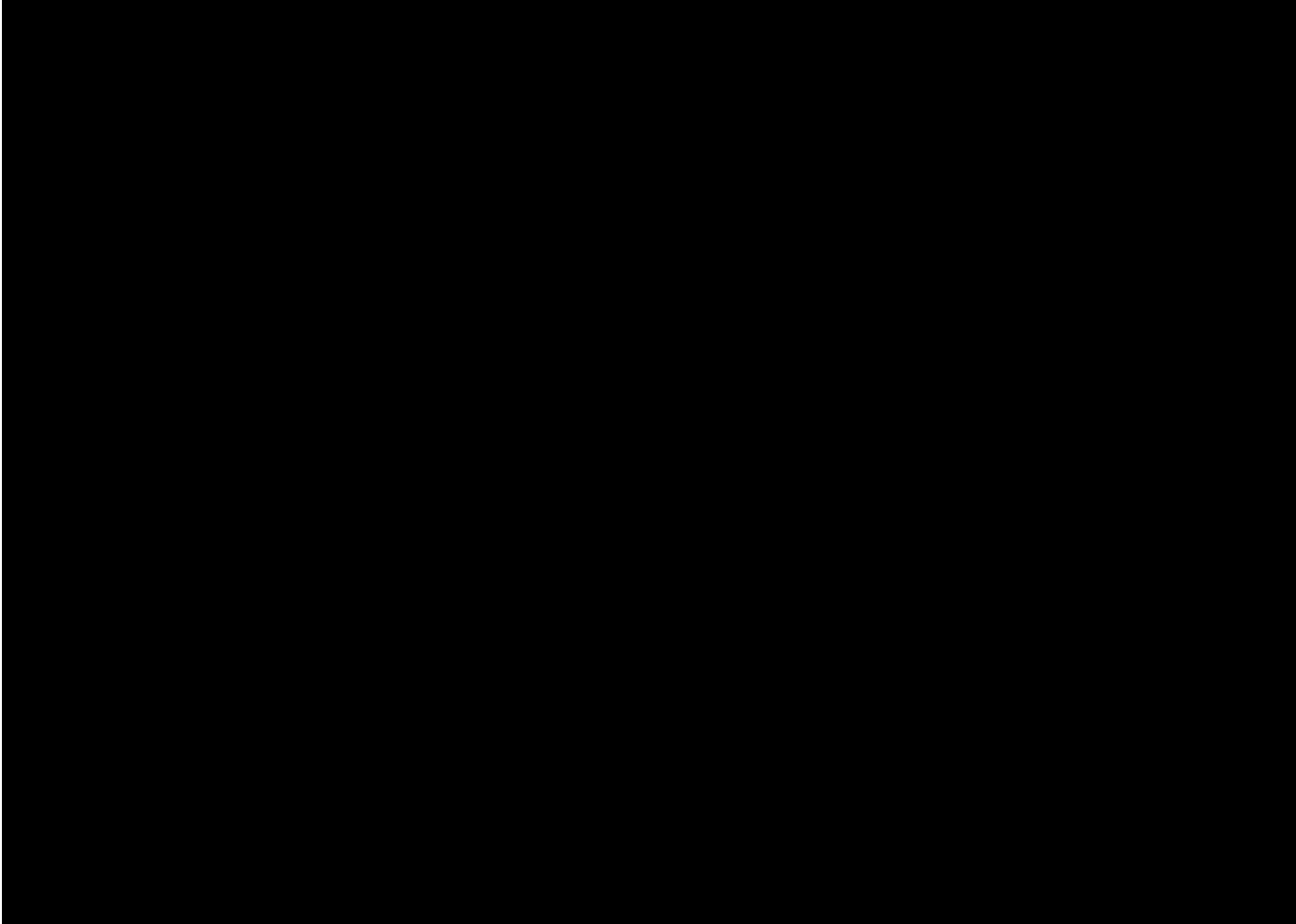


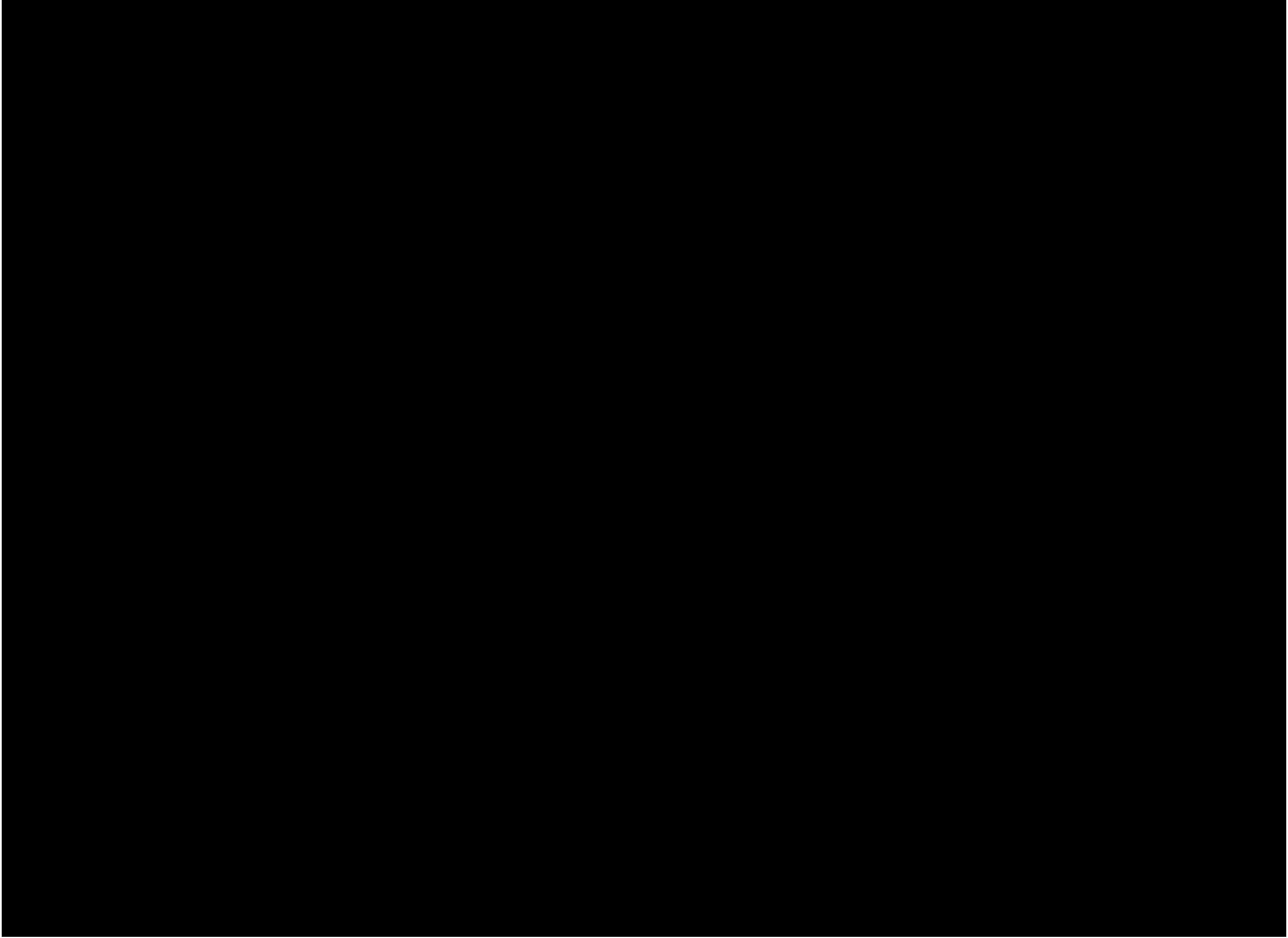


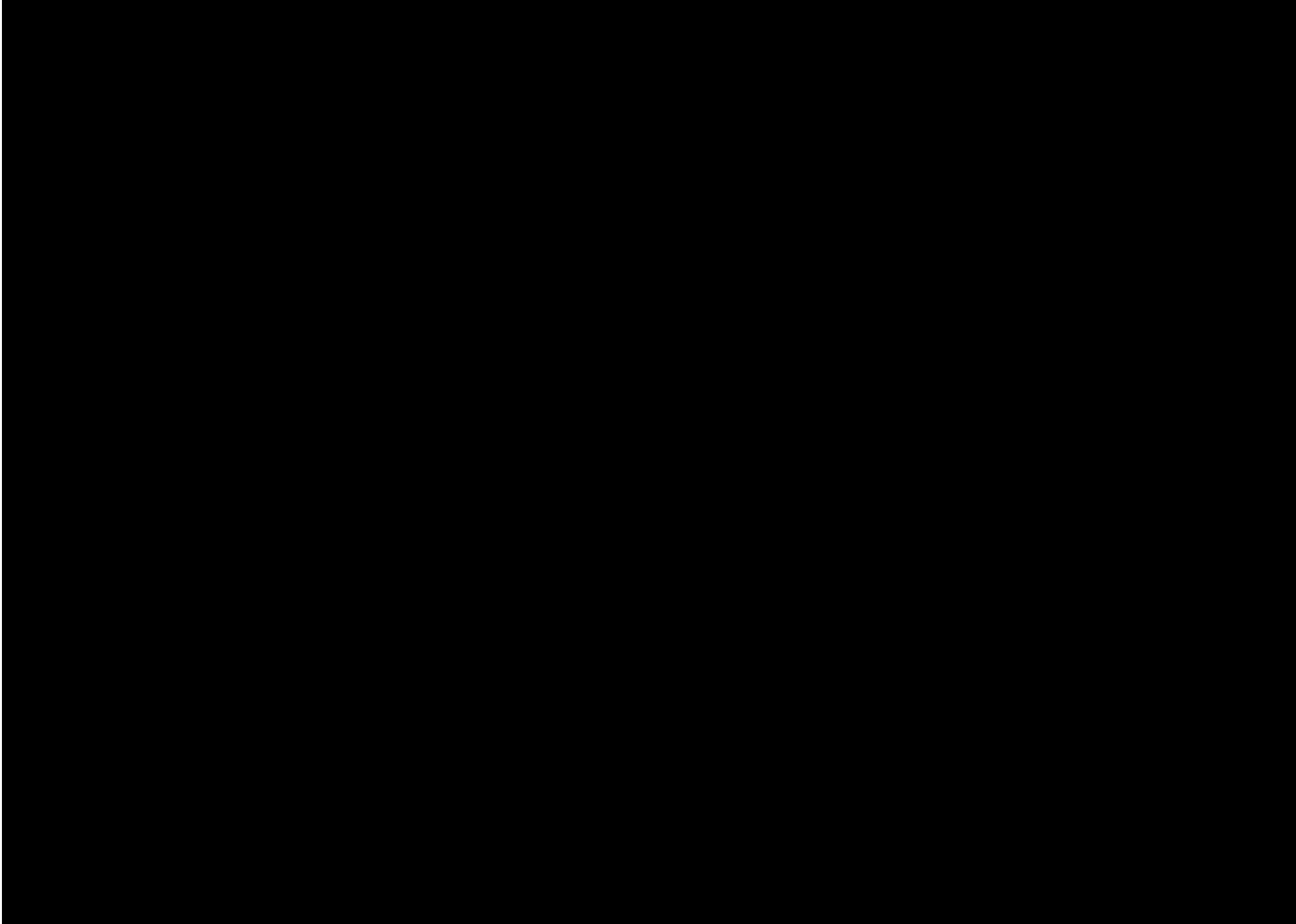


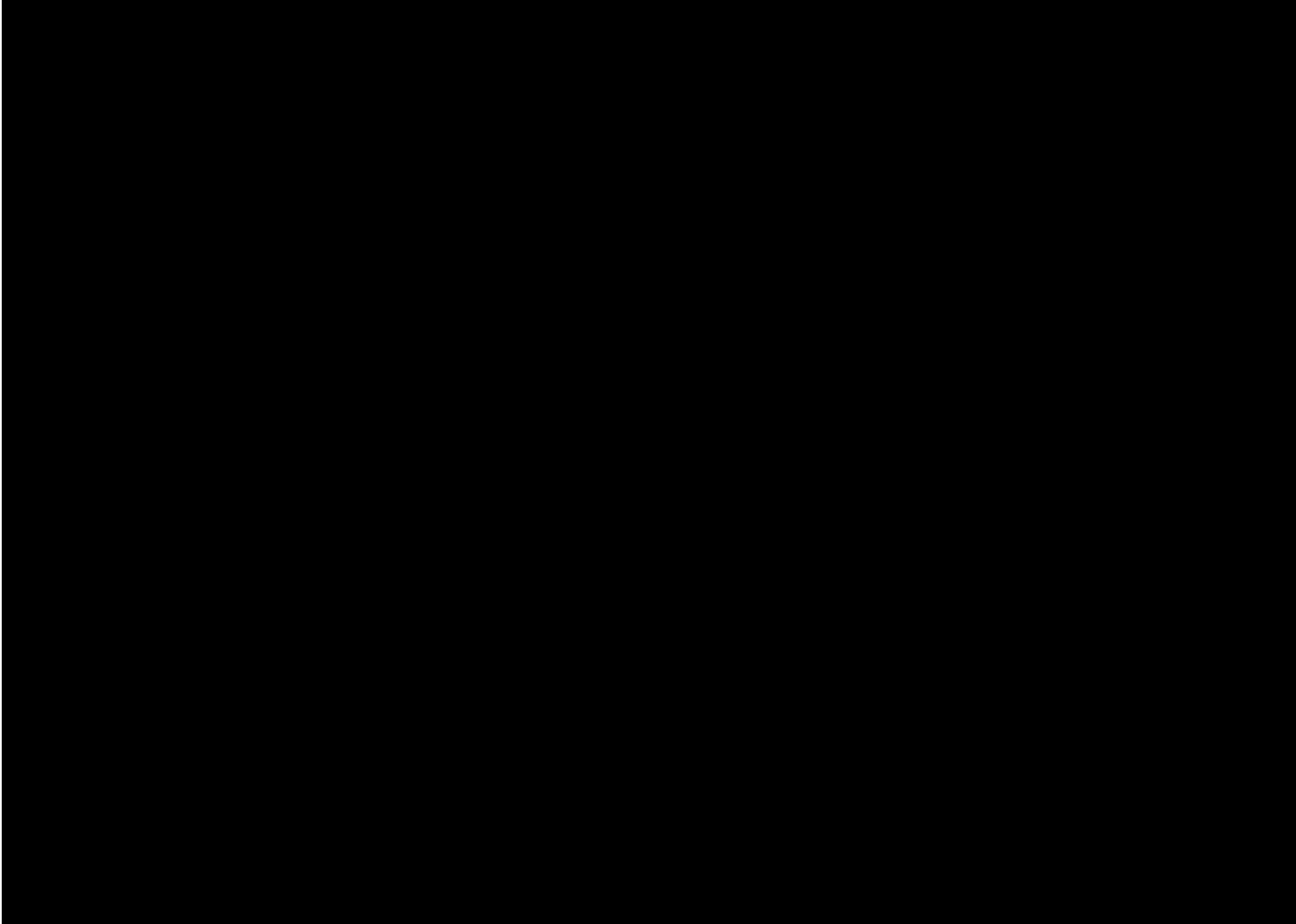


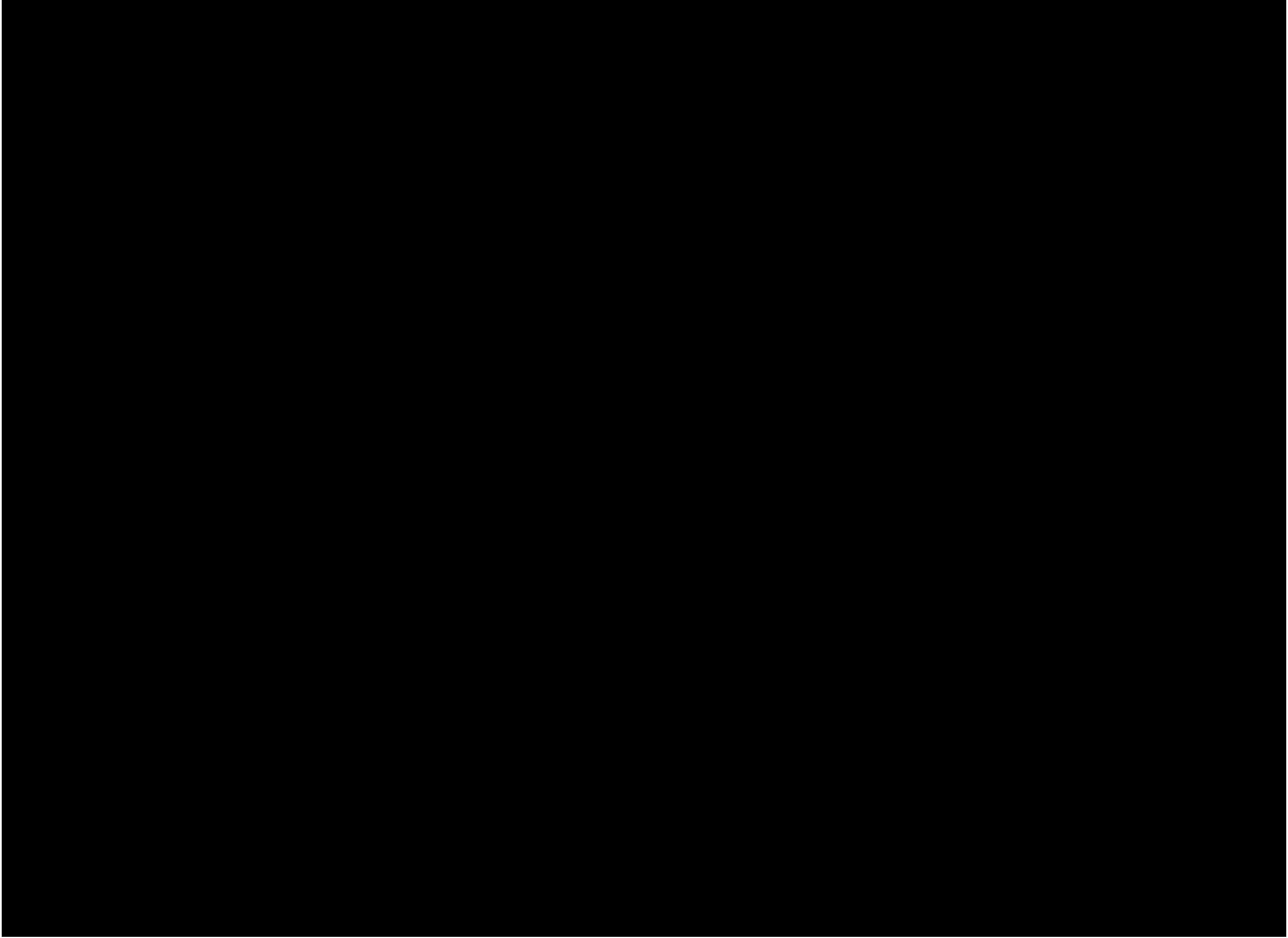


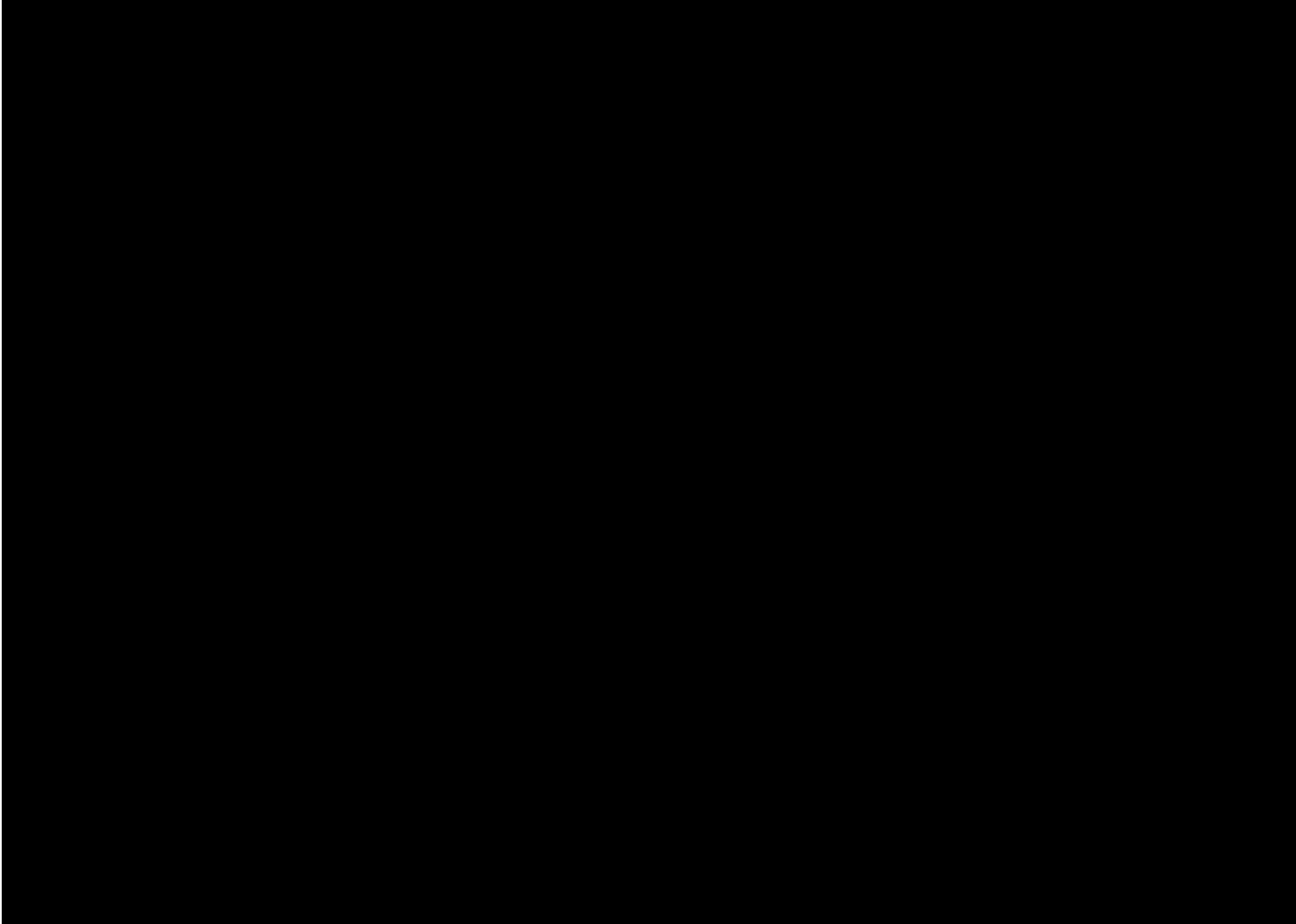


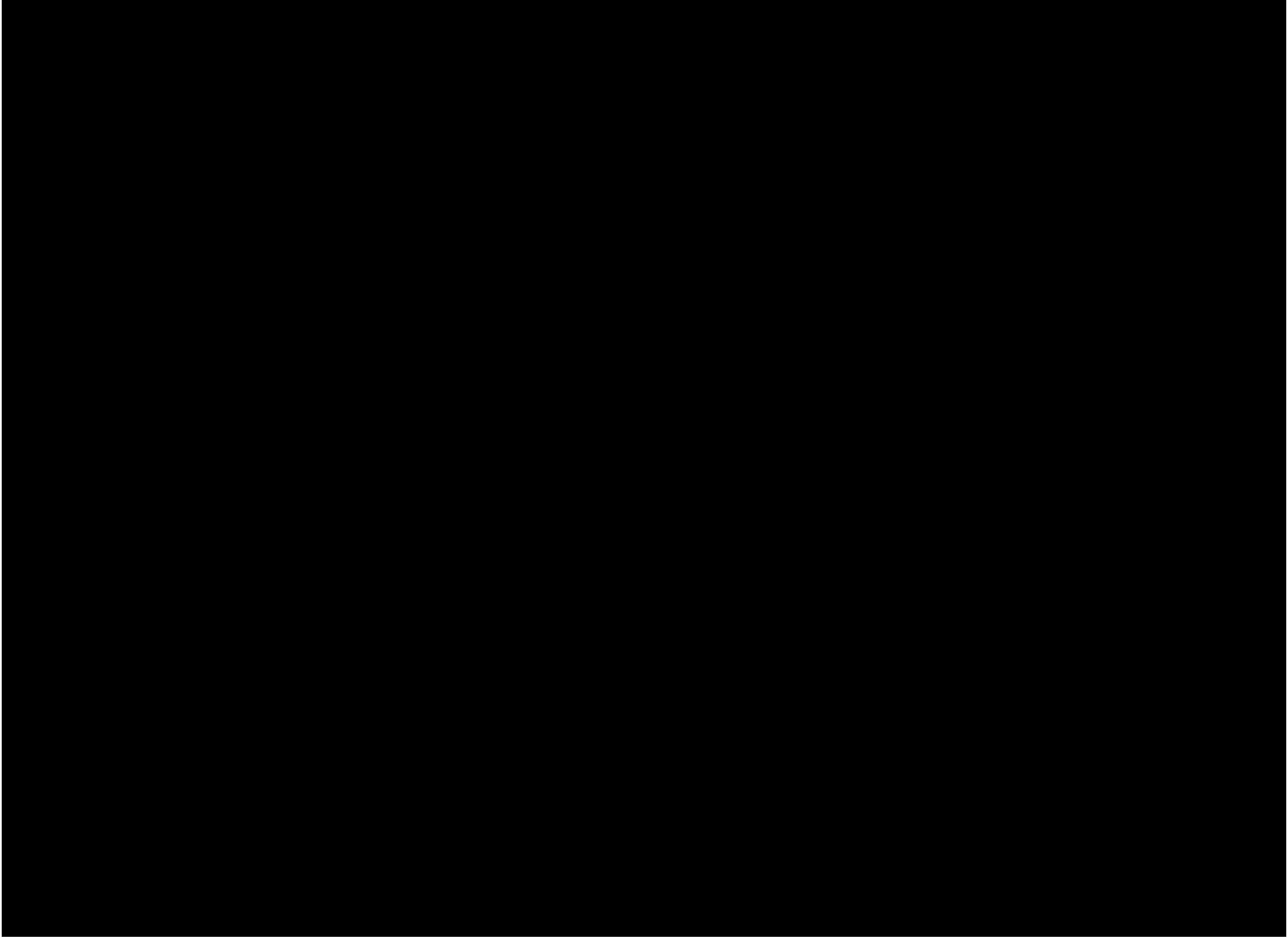


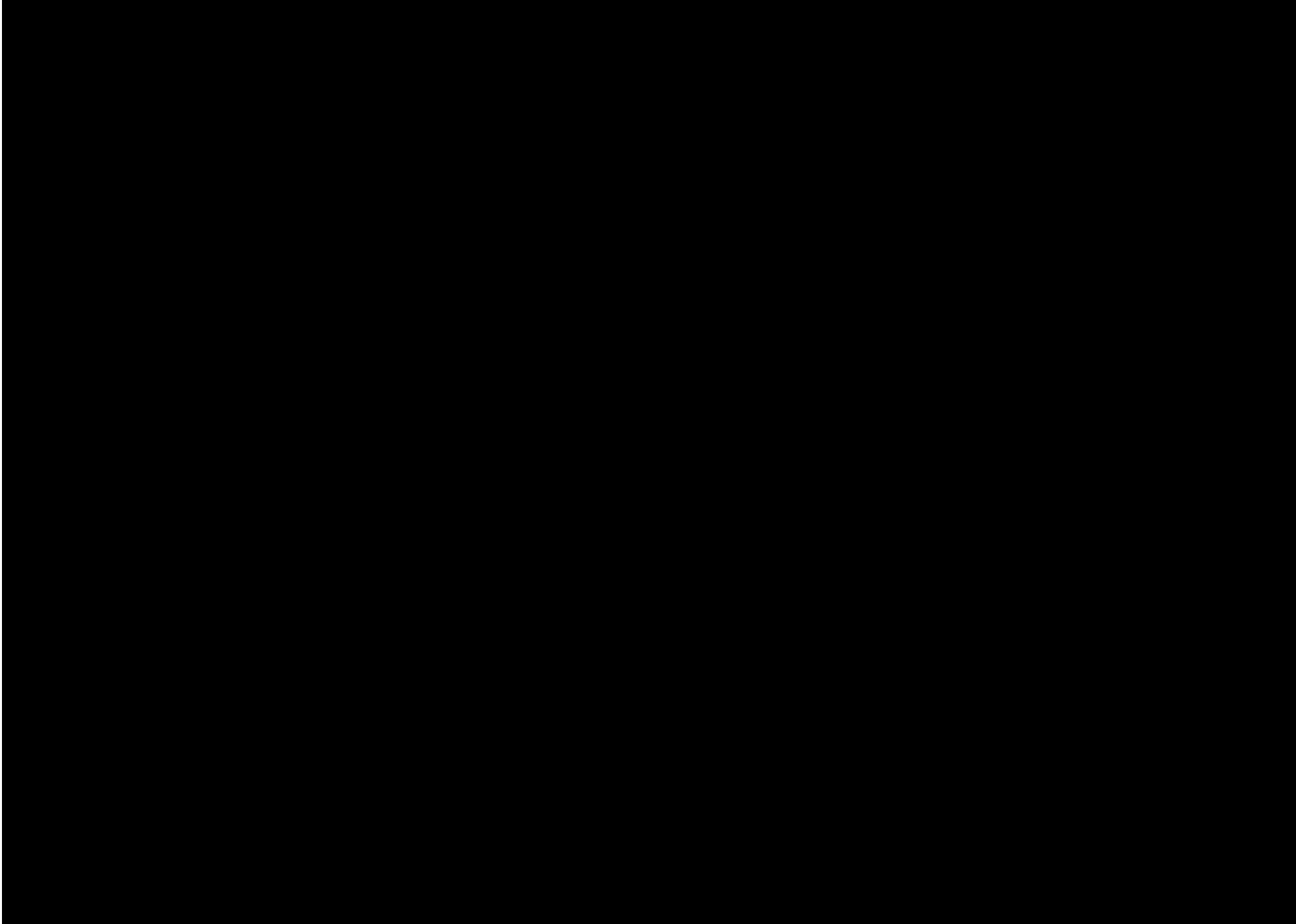


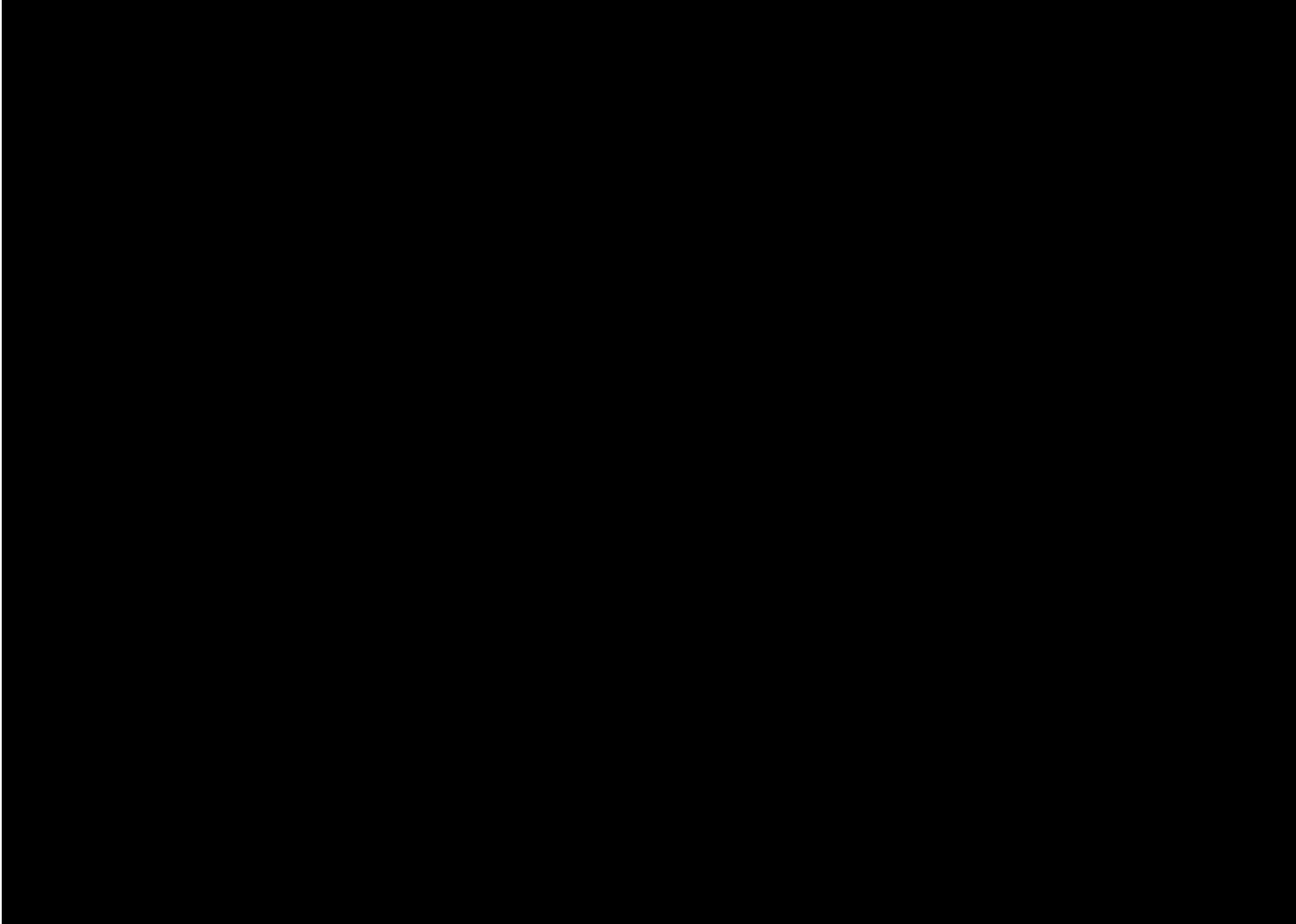


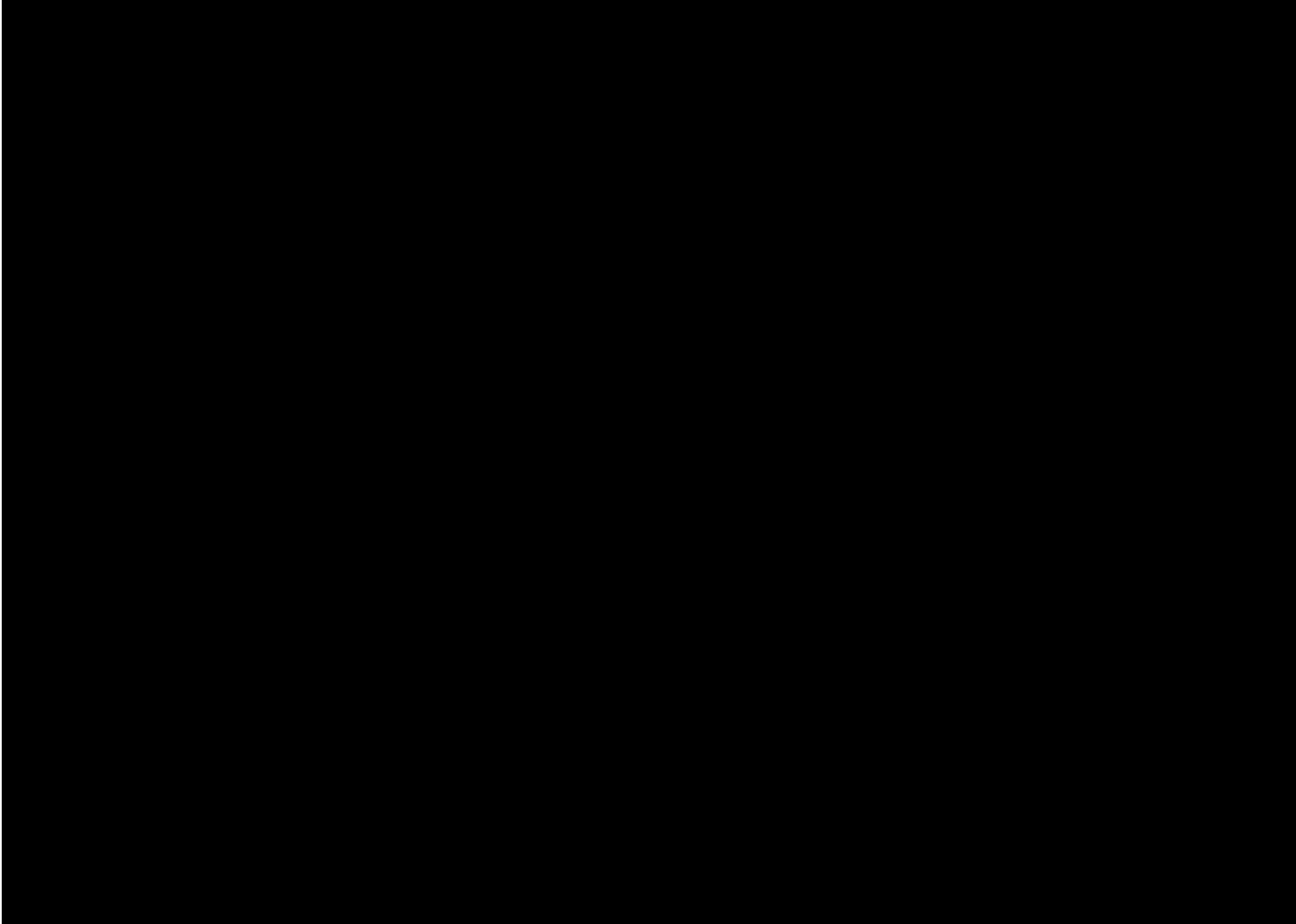


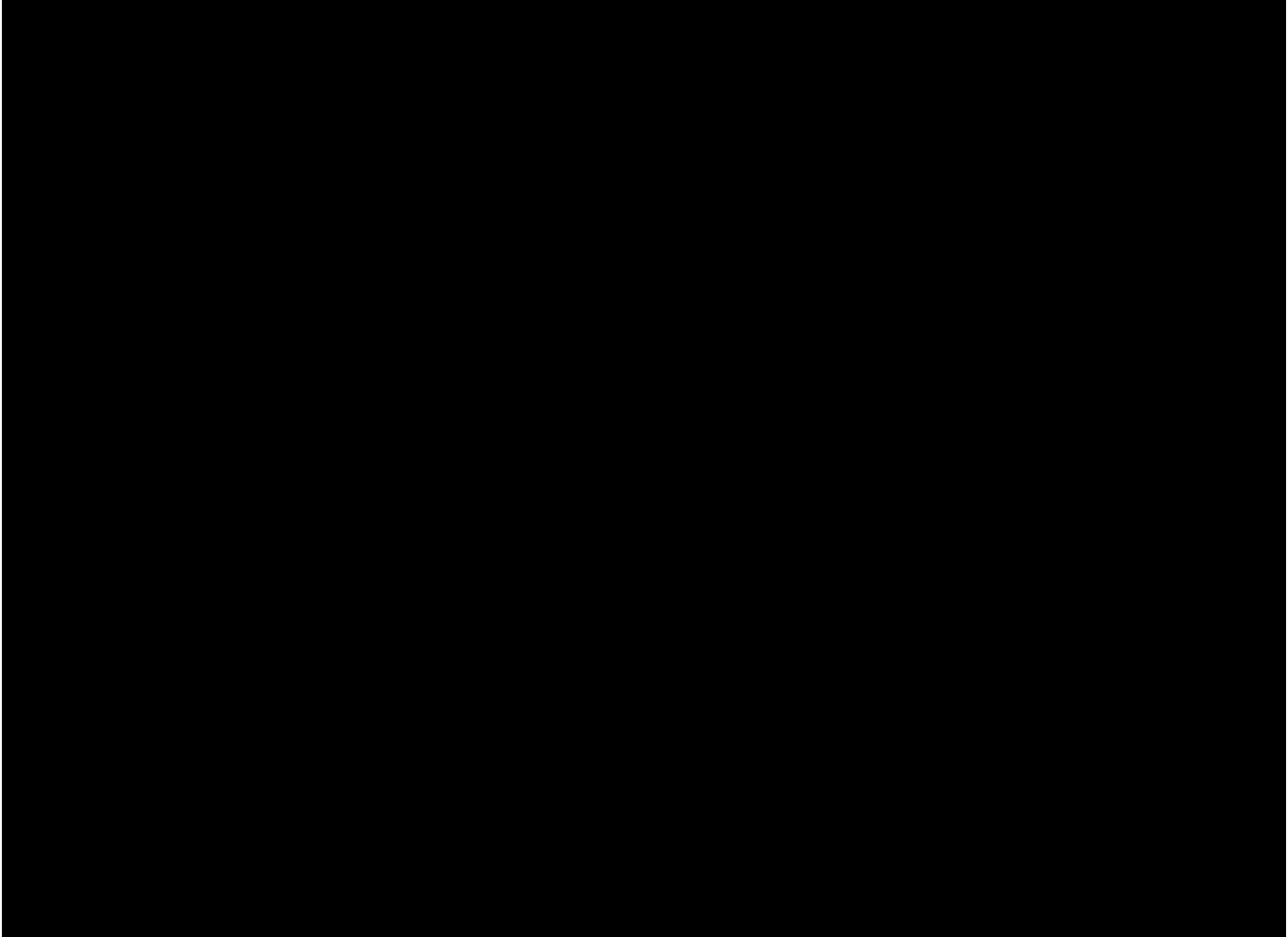


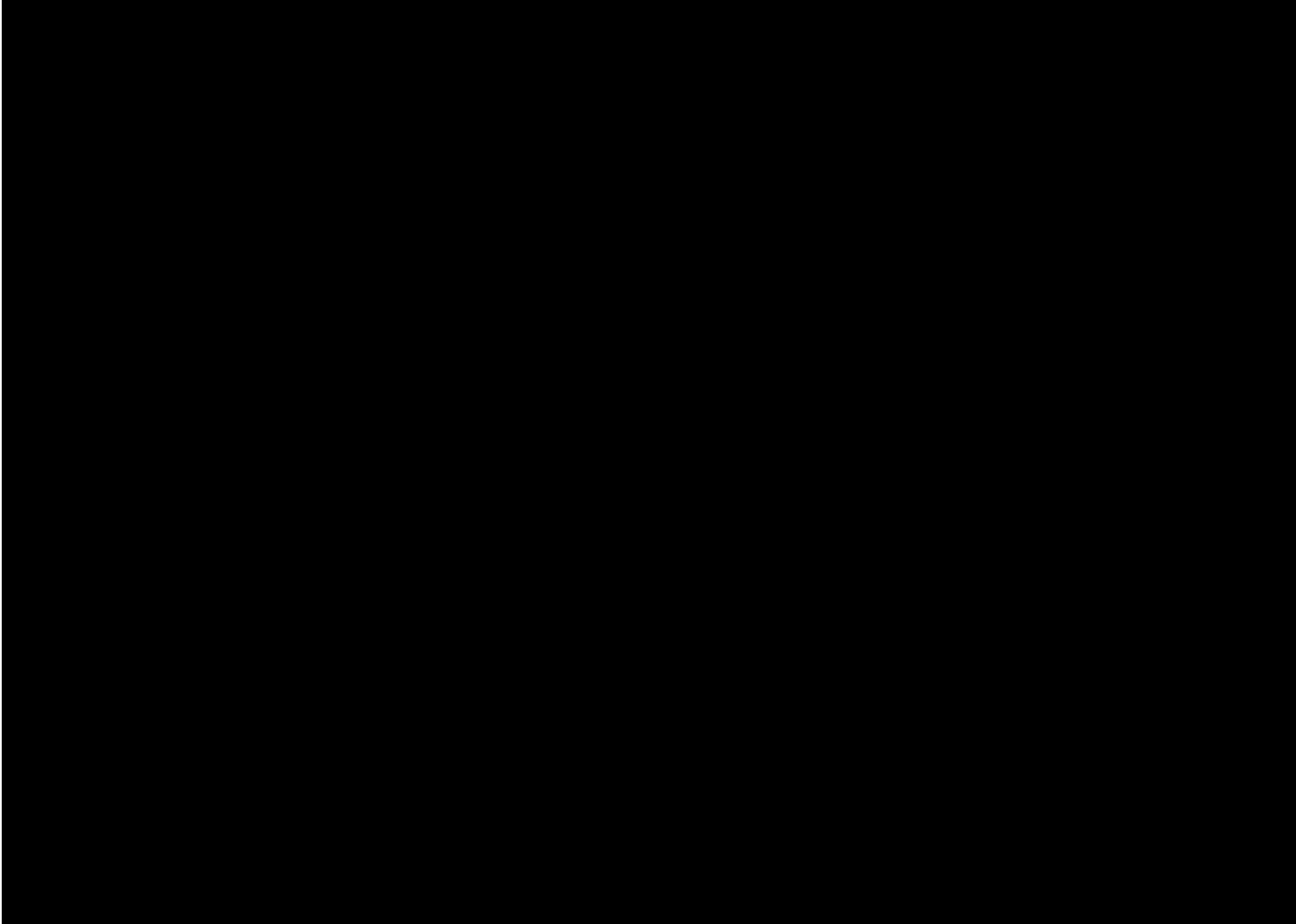


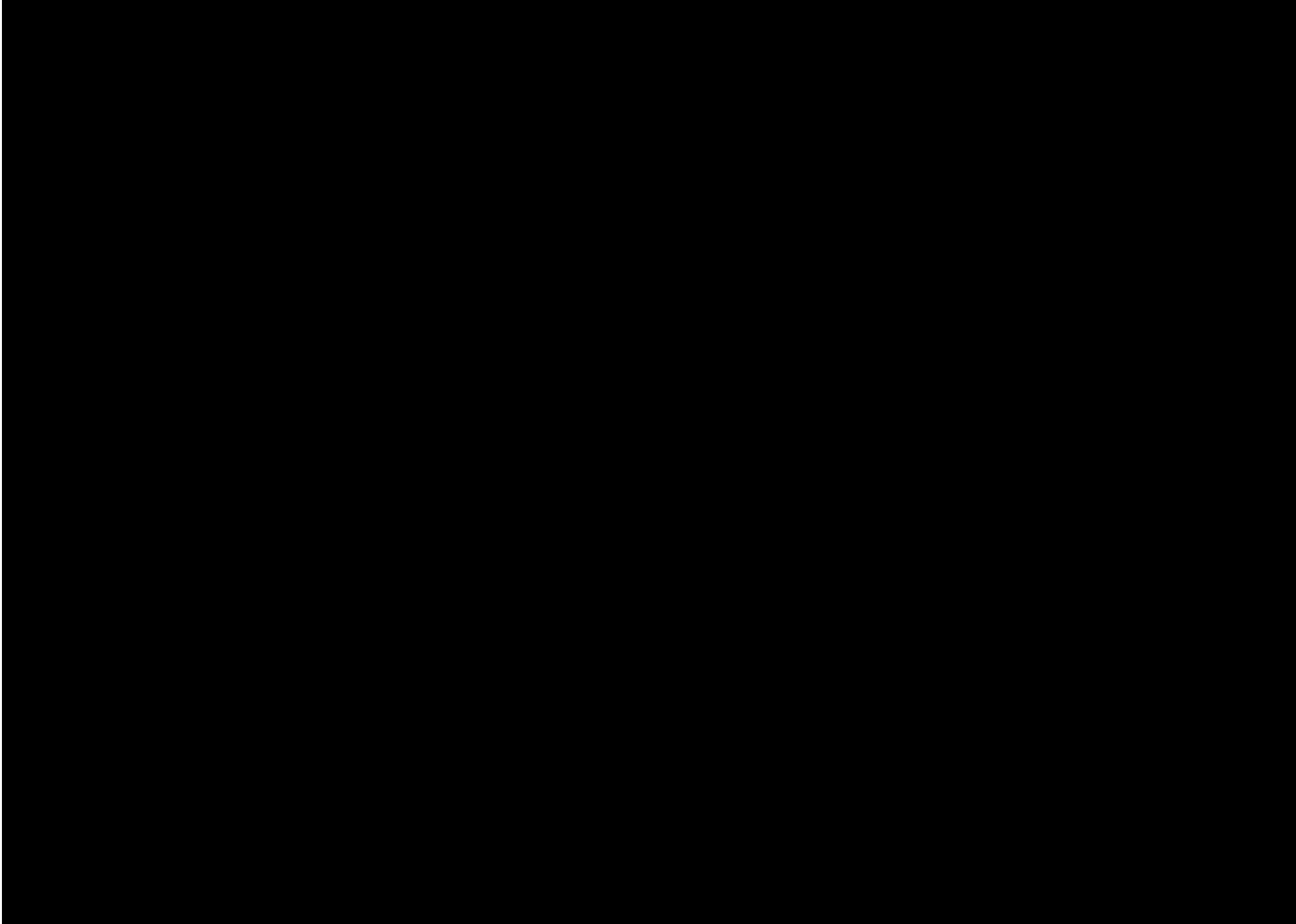












SCHEDULE 8 PAYMENTS

1. DEFINITIONS

In this Schedule 8, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Adjusted Pole Attachment Costs” has the meaning set out in Section 6.2(a) of this Schedule 8;

“Availability Payment” means the sum calculated in accordance with Section 4.1 of this Schedule 8;

“Baseline Pole Attachment Costs” has the meaning set out in Section 6.1(c);

“Baseline Services Costs” means the costs that the Service Provider will incur to perform the Services, equal to \$9,165,220 at the Base Date, escalated in accordance with Section 4.4 of this Schedule 8 and otherwise amended only in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals]. For further certainty the Baseline Services Costs represents \$763,768 of the Maximum Availability Payment at the Base Date;

“COLO Equipment and Cabling” means any equipment or cabling at a COLO Site that is not provided by Project Co;

“Deduction” means a deduction from an Availability Payment, calculated in accordance with this Schedule 8;

“Material Telecommunications Company” means AT&T and Windstream;

“Maximum Availability Payment” means the payment described in Section 4.2 of this Schedule 8;

“Milestone Payment” has the meaning set out in Section 3 of this Schedule 8;

“Node Site” means one of the 31 core backbone nodes listed in Appendix 7A;

“Outage Deduction” means a Deduction which may be made in respect of an Outage;

“Payment Adjustment Report” has the meaning set out in Section 8 of this Schedule 8;

“Pole Attachment Adjustment Mechanism” has the meaning set out in Section 6 of this Schedule 8;

“Pole Attachment Agreement” means an agreement between the Authority and a Pole Provider granting the Authority the right to attach telecommunications equipment to a pole owned or managed by such Pole Provider and can be either a Simple Pole Attachment Agreement or a Complex Pole Attachment Agreement;

“Pole Provider” means any Utility Company, Telecommunications Company or entity listed in Appendix 8A [Baseline Pole Attachment Rates] that owns or manages poles on which the NG-KIH System must attach;

“Reporting Error” has the meaning set out in Section 8 of this Schedule 8;

“Respond Deduction” means a Deduction which may be made as a result of failing to meet the Mean Time to Respond performance standards shown in Section 2 of this Schedule 8;

“Restoration Deduction” means a Deduction which may be made as a result of failing to meet the Mean Time to Restore performance standards shown in Section 2 of this Schedule 8;

“Service Level 1 Site” or **“SL1 Site”** means a Site listed as such in Appendix 7A that will receive an enhanced level of service;

“Service Level 3 Site” or **“SL3 Site”** means a Site listed as such in Appendix 7A that will receive a standard level of service;

“Site Migration” means the time at which a Site is Available;

“Site Migration Date” means the initial date that Site Migration occurs as confirmed by the Independent Certifier in its monthly batching report;

“Site Multiplier” means the factor applied to a Node Site, Service Level 1 Site or a Service Level 3 Site, equal to 12, 6 or 1 respectively;

“Site Value” means the relative monthly value of a Site calculated for the purposes of the Maximum Availability Payment in accordance with Section 4.3, and calculated for the purposes of Deductions in accordance with Section 5.3 of this Schedule 8; and

“Telecommunications Company” means an entity that generates commercial revenues through the provision of telephone, cable or broadband services to residential or business customers.

2. DEDUCTION METRICS

2.1 Key Performance Indicators

The Deductions will be calculated in accordance with the table below. Deductions will not be applicable in respect of (i) any failure of the COLO and Cabling Equipment or (ii) any difference between any lower performance standards set out in any Third Party Infrastructure Agreement and the performance standards that form part of the Deduction Metrics set out in this Schedule 8 and applicable to Project Co. Project Co acknowledges its obligations in Section 4.15 of the Project Agreement and the Authority acknowledges that Project Co will not have any access to the Third Party Infrastructure Provider’s fiber or equipment and therefore will only be able to address a failure of the Third Party Infrastructure Provider’s performance standards once Project Co has become aware of such failure through the NOC.

Metric	Performance Standard	Deduction Regime					
Node Sites	Availability	99.9%, including all Outages	<i>Month 1</i> 10%	<i>Month 2</i> 25%	<i>Month 3</i> 50%	<i>Month 4</i> 75%	<i>Month 5</i> 100%
	Mean Time to Respond	4 hours with required resources, applicable to all Outages	<i>Range 1 (R1)</i> 4.00-4.50 Hours \$500 per event		<i>Range 2 (R2)</i> 4.50-5.00 Hours \$750 per event		<i>Range 3 (R3)</i> >5.00 Hours \$1,000 per event
	Mean Time to Restore	<u>Equipment-Only Outage:</u> 80% in 6 hours	6-10Hrs 10%	10-14Hrs 25%	14-18Hrs 50%	18-30Hrs 75%	>30Hrs 100%
		<u>Fiber Outage:</u> 12 hours	12-16Hrs 10%	16-20Hrs 25%	20-24Hrs 50%	24-36Hrs 75%	>36Hrs 100%
Service Level 1	Availability	99.9% excluding Fiber Outages on the Laterals	<i>Month 1</i> 10%	<i>Month 2</i> 25%	<i>Month 3</i> 50%	<i>Month 4</i> 75%	<i>Month 5</i> 100%
	Mean Time to Respond	4 hours with required resources, applicable to all Outages	<i>Range 1 (R1)</i> 4.0-4.5 Hours \$500 per event		<i>Range 2 (R2)</i> 4.50-5.00 Hours \$750 per event		<i>Range 3 (R3)</i> >5.00 Hours \$1,000 per event
	Mean Time to Restore	<u>Equipment-Only Outage:</u> 8 hours	8-12Hrs 10%	12-16Hrs 25%	16-20Hrs 50%	20-32Hrs 75%	>32Hrs 100%
		<u>Fiber Outage:</u> No Deductions					
Service Level 3	Availability	99.0% excluding Fiber Outages on the Laterals	<i>Month 1</i> 10%	<i>Month 2</i> 25%	<i>Month 3</i> 50%	<i>Month 4</i> 75%	<i>Month 5</i> 100%
	Mean Time to Respond	90% within 5 hours with required resources, applicable to all Outages	5.0-6.0Hrs 10%	6.0-7.0Hrs 15%	7.0-8.0Hrs 20%	>8Hrs 100%	
	Mean Time to Restore	<u>Equipment-Only Outage:</u> 8 hours	8-12Hrs 10%	12-16Hrs 25%	16-20Hrs 50%	20-32Hrs 75%	>32Hrs 100%
		<u>Fiber Outage:</u> No Deductions					

where:

- (a) all time periods shown begin on the first minute past the hour, and end at the top of the hour. For further clarity, a time range of 8 to 12 hours refers to any time between 8 hours 1 minute and 12 hours 0 minutes, inclusive; and
- (b) all Outages measured in accordance with Sections 5.8, 5.9, 5.10 of this Schedule 8 will be rounded up to the nearest minute.

2.2 Deduction Percentage

- (a) The Deduction Percentage for the Availability performance standard applied in each month in respect of Outage Deductions for each specific category of Sites will depend on the number of consecutive months in which Project Co has not met the Availability performance standards required in Section 2.1 of this Schedule 8. For further clarity, the first month of infringement equates to a Deduction Percentage equal to 10%, increasing to 25%, 50%, 75% and 100% for consecutive infringements of two, three, four and five or more months, respectively.
- (b) The Deduction Percentage for the Mean Time to Respond performance standard applied in each month in respect of Respond Deductions for Service Level 3

Sites is calculated as the length of time by which Project Co's average incident response time exceeds the performance standard of responding within 5 hours, required in Section 2.1 of this Schedule 8. For further clarity, an average response time of between 5 hours 1 minute and 6 hours would result in a Deduction Percentage equal to 10%. For average response times between 6 hours 1 minute and 7 hours, 7 hours 1 minute to 8 hours and greater than 8 hours, the Deduction Percentage would be equal to 15%, 20% and 100% respectively.

- (c) The Deduction Percentage for the Mean Time to Restore performance standard applied in each month in respect of Restoration Deductions for each category of Sites is calculated as the length of time by which Project Co's average service restoration time exceeds the respective performance standard required in Section 2.1 of this Schedule 8 for Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires. For further clarity, an average breach of between 1 minute and 4 hours beyond the permissible restoration time in any given month would result in a Deduction Percentage equal to 10%. The Deduction Percentage escalates to 25%, 50%, 75% and 100% for average breaches of 4 hours 1 minute to 8 hours, 8 hours 1 minute to 12 hours, 12 hours 1 minute to 24 hours and greater than 24 hours beyond the permissible restoration time, respectively.

3. MILESTONE PAYMENT

- (a) The Authority shall pay to Project Co \$23,500,000 on the Ring Availability Date for Ring 1B (a "**Milestone Payment**"), or earlier at the Authority's election. For clarity, subject to compliance by Project Co with applicable federal grant reporting requirements set out in Schedule 14 [Records and Reports] and federal project wage payment requirements where applicable, the Authority will be responsible for satisfying any obligations related to obtaining grant monies or other funding necessary to make the Milestone Payment and obtaining such grant monies or other funding is not a condition to the Authority's obligation to make the Milestone Payment.
- (b) To the extent that the Authority's purchase of the Designated Equipment does not equal the Designated Equipment Value then Section 3.6 of the Project Agreement will apply.

4. AVAILABILITY PAYMENTS

4.1 Calculation of Availability Payments

During the Operating Period, the Authority will pay Project Co in respect of each month an Availability Payment. The Availability Payment is the Maximum Availability Payment for that month, less the sum of Outage Deductions, Respond Deductions and Restoration Deductions for that month, provided that if the Availability Payment in respect of any month (or part thereof, as the case may be), determined in accordance with this Section 4.1, is a negative amount, it shall be deemed to be zero.

4.2 Maximum Availability Payment

- (a) The Maximum Availability Payment prior to System Completion in respect of any month shall be the sum of:
- (1) the Site Value multiplied by the Site Multiplier for Service Level 1 Sites, multiplied by the number of Service Level 1 Sites that have achieved Site Migration prior to that month;
 - (2) for each Service Level 1 Site that achieved Site Migration during that month, the proportion of the Site Value reflecting the number of days from Site Migration to the month's end, multiplied by the Site Multiplier for Service Level 1 Sites;
 - (3) the Site Value multiplied by the Site Multiplier for Service Level 3 Sites, multiplied by the number of Service Level 3 Sites that have achieved Site Migration prior to that month;
 - (4) for each Service Level 3 Site that achieved Site Migration during that month, the proportion of the Site Value reflecting the number of days from Site Migration to the month's end, multiplied by the Site Multiplier for Service Level 3 Sites;
 - (5) all Changes approved by the Authority in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals];
 - (6) the Pole Attachment Renewal Adjustment, in accordance with Section 6 of this Schedule 8; and
 - (7) any adjustments made in accordance with Section 10.1 of this Schedule 8 or Section 10.3 of the Project Agreement.

where:

- (1) all components of the Maximum Availability Payment are escalated in accordance with Section 4.4 of this Schedule 8; and
 - (2) the stub period adjustments set out in subsections (2) and (4) above are measured from the first full day after the applicable Site Migration Date as confirmed by the Independent Certifier, and will be calculated and paid in accordance with Section 4.5 of this Schedule 8.
- (b) The Maximum Availability Payment after System Completion in respect of any month shall be \$2,378,363 at the Base Date, adjusted for the following parameters:
- (1) the Pole Attachment Renewal Adjustment, in accordance with Section 6 of this Schedule 8;
 - (2) the First System Refresh and the Second System Refresh, in accordance with Section 7 of this Schedule 8;
 - (3) the Market Testing completed at the first Market Testing Date and the second Market Testing Date in accordance with Section 7 of this Schedule 8;
 - (4) all Changes approved by the Authority in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals]; and

- (5) any adjustments made in accordance with Section 10.1 of this Schedule 8 or Section 10.3 of the Project Agreement

where:

- (1) all components of the Maximum Availability Payment are escalated in accordance with Section 4.4 of this Schedule 8.

4.3 Calculating the Site Value for the Maximum Availability Payment Prior to System Completion

- (a) For the purposes of calculating the Maximum Availability Payment prior to System Completion, the monthly Site Value at the Base Date is calculated as the Maximum Availability Payment at the Base Date, assuming System Completion, divided by the aggregate number of Service Level 1 Sites and Service Level 3 Sites, weighted according to their respective Site Multipliers, resulting in a Site Value for each Service Level 1 Site and each Service Level 3 Site;
- (b) The monthly Site Value at the Base Date, prior to System Completion, will be escalated annually at the end of each Fiscal Year commencing after the Base Date in accordance with Section 4.4(b) of this Schedule 8.

4.4 Annual Escalation of the Maximum Availability Payment

- (a) The Maximum Availability Payment after System Completion will be annually escalated at the end of each Fiscal Year after the Base Date in three tiers:
 - (1) \$1,472,248, applicable to the capital and financing tier, will be escalated at a fixed rate of 2.5% per annum, starting from the Base Date;
 - (2) \$394,848, applicable to the labor portion of the operations and maintenance tier, will be adjusted by the change percentage in the Labor Inflation Index, starting from the Base Date; and
 - (3) \$511,267, applicable to the remaining portion of the operations and maintenance tier will be adjusted by the change percentage in the Materials Inflation Index, starting from the Base Date.
- (b) For purposes of calculating the Maximum Availability Payment prior to System Completion, the Site Value at the Base Date will be annually escalated at the end of each Fiscal Year after the Base Date in three tiers:
 - (1) 61.9%, applicable to the capital and financing tier, will be escalated at a fixed rate of 2.5% per annum, starting from the Base Date;
 - (2) 16.6%, applicable to the labor portion of the operations and maintenance tier, will be adjusted by the change percentage in Labor Inflation Index, starting from the Base Date; and
 - (3) 21.5%, applicable to the remaining portion of the operations and maintenance tier, will be adjusted by the change percentage in the Materials Inflation Index, starting from the Base Date.

- (c) The Labor Inflation Index change percentage for each Fiscal Year will be calculated from the average of the quarterly published values, rounded to one decimal place, for the four quarters ending in June, September, December and March prior to the start of the relevant Fiscal Year, divided by the average of the four quarterly published values, rounded to one decimal place, for the four quarters ending in June, September, December and March of the preceding Fiscal Year, and expressed as an annual percentage change, rounded to one decimal place.
- (d) The Materials Inflation Index change percentage for each Fiscal Year will be calculated from the average of the monthly published values, rounded to three decimal places, for the twelve months ending March prior to the start of the relevant Fiscal Year, divided by the average of the monthly published values, rounded to three decimal places, for the twelve months ending in March of the preceding Fiscal Year, and expressed as an annual percentage change, rounded to one decimal place.

4.5 Stub Periods

- (a) The Independent Certifier's monthly batching report will list all the Service Level 1 Sites and Service Level 3 Sites that have achieved Site Migration in a given month *m*.
- (b) The Site Value for such Service Level 1 Sites and Service Level 3 Sites, will be adjusted to recognize the number of days that the Site was Available between Site Migration and the end of that month.
- (c) For further clarity, if a Site achieved Site Migration on the 15th day of a month, which has 30 days, the invoice submitted to the Authority for that month, by Project Co in accordance with Section 9 of this Schedule 8, would include a stub period adjustment equal to 50% of the Site Value for that Site, where 50% is calculated as 15 active days divided by 30 days in the month.
- (d) If Project Co submits an application for Site Migration in the final 5 Business Days of a given month, to the extent such Site Migration is certified as achieved, such achievement of Site Migration will be included in the following month's batching report from the Independent Certifier. The stub period adjustment for such Site will therefore be included in the invoice for the month following such Site Migration and will be calculated in accordance with Sections 4.5(b) and (c) above. For further clarity, in such case the stub period adjustment for the relevant Site will result in an amount greater than 100% of the Site Value multiplied by the Site Multiplier for such Site being included in the invoice for the month following Site Migration.

Worked Example 1: Calculating Escalation & the Stub Period Adjustment

It is September 30, 2017. The table below shows the Sites that were completed in the September quarter of 2017. The Site Value at the Base Date for a Service Level 3 Site was \$750, and the Site Value for each Site is split approximately 57% for the Fixed Inflation Index, 19% for the Labor Inflation Index and 24% for the Materials Inflation Index.

Site Category	Sites Migrated 30 June 2017	Site Migration Date July 2017	Site Migration Date August 2017	Site Migration Date September 2017
Node Sites	15	2 on Jul 6 1 on Jul 29	1 on Aug 15	2 on Sep 16
SL 1 Sites	100	5 on Jul 20	6 on Aug 7 3 on Aug 28	5 on Sep 3
SL 3 Sites	150	3 on Jul 31	10 on Aug 15	15 on Sep 24

The published escalation indices for the period are also shown in the table below.

month	ECI-U		CPI-U	
	Fiscal Year 2016	Fiscal Year 2017	Fiscal Year 2016	Fiscal Year 2017
April	-	-	235.787	249.967
May	-	-	236.599	251.216
June	132.5	135.8	237.805	252.472
July	-	-	238.994	253.735
August	-	-	240.189	255.003
September	133.3	136.7	241.390	256.278
October	-	-	242.597	257.560
November	-	-	243.810	258.848
December	134.2	137.5	245.029	260.142
January	-	-	246.254	261.442
February	-	-	247.485	262.750
March	135.0	138.4	248.723	264.063

Calculate the Maximum Availability Payment for September 2017, which will be invoiced to the Commonwealth 10 Business Days into October 2017. The Independent Certifier's Report captures only those Sites that achieve Site Migration within 5 Business Days before the end of September.

Calculation Steps:

- 1) Calculate the Escalation Indices

$$FI_{2017} = 1.025^1 = 1.025$$

$$LI_{2017} = \frac{(135.8 + 136.7 + 137.5 + 138.4)/4}{(132.5 + 133.3 + 134.2 + 135.0)/4} = 1.025$$

$$MI_{2017} = \frac{\left(\begin{array}{l} 249.967 + 251.216 + 252.472 + 253.735 + \\ 255.003 + 256.278 + 257.560 + 258.848 + \\ 260.142 + 261.442 + 262.750 + 264.063 \end{array} \right) / 12}{\left(\begin{array}{l} 235.787 + 236.599 + 237.805 + 238.994 + \\ 240.189 + 241.390 + 242.597 + 243.810 + \\ 245.029 + 246.254 + 247.485 + 248.723 \end{array} \right) / 12} = 1.062$$

2) Escalate the Site Value from the Base Date

The NG-KIH System is still under construction, and as such the Maximum Availability Payment will be calculated in accordance with Section 4.3 of this Schedule 8.

$$\begin{aligned} SV_{BaseDate} &= (\$750 \times 57\% + \$750 \times 19\% + \$750 \times 24\%) \\ SV_{1Q2017} &= (\$428 \times 1.025 + \$143 \times 1.025 + \$180 \times 1.062) = \$776 \\ SV_{SL1} &= \$4,656 \quad SV_{SL3} = \$776 \end{aligned}$$

3) Calculate the Maximum Availability Payment Made for Sites Connected For a Full Month

This calculation refers to Sites that have achieved Site Migration for at least a full month, and so it captures all Sites connected up to the Independent Certifier's cutoff date, which is 5 Business Days prior to the end of August, being the calendar month prior to the delivery of the Independent Certifier's monthly batching report for September 2017.

$$AP_{Max(Connected)} = \left(\begin{array}{l} (100 + 5 + 6) \text{ SL1s} \times \$4,656 + \\ (150 + 3 + 10) \text{ SL3s} \times \$776 \end{array} \right)$$

$$AP_{Max(Connected)} = (111 \times \$4,656 + 163 \times \$776) = \$643,304$$

4) Calculate the Additional Availability Payments Required for the Sites Connected During the stub period

The stub period adjustment captures the number of days that the Sites were active in the month that each Site achieved Site Migration. Three SL1 Sites connected on August 28, and as such were not included in the stub period calculation included in the prior invoice for the month of August, and are therefore included in the current invoice for the month of September and calculated in accordance with Section 4.5(d) of this Schedule 8. All the September completions applied to the Independent Certifier for Site Migration prior to the September cutoff date, and thus will be included in the stub period adjustment for the month of connection and calculated in accordance with Sections 4.5(b) and 4.5(c) of this Schedule 8.

$$AP_{Max,SL1} = \$4,656 \times \left[\begin{array}{l} 3 \times \left(\frac{3 \text{ Active Days}}{31 \text{ Days in August}} + 1 \right) \\ + \\ 5 \times \left(\frac{27 \text{ Active Days}}{30 \text{ Days in September}} \right) \end{array} \right] = \$36,272$$

$$AP_{Max,SL3} = \$776 \times 15 \times \left(\frac{6 \text{ Active Days}}{30 \text{ Days in September}} \right) = \$2,328$$

- 5) Add 3) and 4) to Calculate the Maximum Availability Payment for the Month

$$AP_{Max,9/17} = \$643,304 + \$36,272 + \$2,328 = \$681,904$$

5. DEDUCTIONS FROM AVAILABILITY PAYMENTS

5.1 Entitlement to Make Deductions

If, at any time after the Site Completion Date in respect of the relevant Site, an Outage which generates a NOC Incident Ticket occurs, the Authority will be entitled to make Deductions in accordance with this Schedule 8 in respect of that Outage from the Availability Payment for the relevant month, except that:

- (a) the aggregate of all Deductions that the Authority may make from an Availability Payment may not exceed the amount of the Maximum Availability Payment in respect of a month;
- (b) to the extent that an Outage is the result of an Excusing Event or a Compensation Event, the Authority will not be entitled to make Deductions;
- (c) Outages during planned maintenance windows will not contribute to Deductions;
- (d) Fiber Outages on a Lateral will not contribute to Outage Deductions for Service Level 1 Sites or Service Level 3 Sites;
- (e) Fiber Outages will not contribute to Restoration Deductions for Service Level 1 Sites or Service Level 3 Sites. To the extent that a Service Level 1 or Service Level 3 Site is not Available after restoration of a Fiber Outage on the Rings, an Equipment-Only Outage will commence from notification to the NOC of restoration of such Fiber Outage;
- (f) Project Co must trigger both the respond to 90% of Outages within 5 hours and 5 hour Mean Time to Respond performance standards to be eligible for Respond Deductions on Outages that affect Service Level 3 Sites; and
- (g) Project Co must trigger both the restore 80% of Equipment-Only Outages within 6 hours and 6 hour Mean Time to Restore performance standards to be eligible for Restoration Deductions on Equipment-Only Outages that affect the Node Sites.

5.2 Classification of Outage

The final classification of the type of Outage as an Equipment-Only Outage or a Fiber Outage will be made before the ticket in respect of such Outage is closed by the NOC. An Outage which is incorrectly classified may be re-classified only with the approval of the Authority, such approval not to be unreasonably withheld or delayed. If an Outage is re-classified, the

appropriate Deduction (if applicable) will be made and any Deduction incorrectly applied will be withdrawn.

5.3 Calculating the Site Value for Deductions

- (a) The Site Value applicable to the calculation of Deductions at the Base Date will be calculated as the Maximum Availability Payment at the Base Date, assuming that all Sites, including the Node Sites, have achieved Site Completion, divided by the aggregate number of Sites, including the Node Sites, weighted according to their respective Site Multipliers resulting in a Site Value for each Node Site, each Service Level 1 Site and each Service Level 3 Site.
- (b) The Site Value applicable to the calculation of Deductions at the Base Date will be separated into three escalation tiers, each of which will be escalated in accordance with the following formula:

$$SV_{D,m} = (\$508 \times FI_y) + (\$136 \times LI_y) + (\$176 \times MI_y)$$

where:

- $SV_{D,m}$ = Site Value in respect of month m
- FI_y = Fixed escalation of 2.50% annually, calculated in respect of Fiscal Year y as 1.025^y
- LI_y = Labor Inflation Index in respect of Fiscal Year y , calculated in accordance with Section 4.4(c)
- MI_y = Materials Inflation Index in respect of Fiscal Year y , calculated in accordance with Section 4.4(d)

5.4 Total Deductions

Subject to Section 5.1 of this Schedule 8, the total amount of the Deductions to be made in respect of each month m shall be determined in accordance with the following formula:

$$D_m = TOD_m + RSP_m + RST_m$$

where

- D_m = Total Deductions in respect of month m
- TOD_m = Total Outage Deductions for all Sites, for the relevant month m , calculated in accordance with Section 5.5 of this Schedule 8
- RSP_m = The Respond Deductions for all Sites for the relevant month m , calculated in accordance with Section 5.6 of this Schedule 8
- RST_m = The Restoration Deductions for all Sites for the relevant month m , calculated in accordance with Section 5.7 of this Schedule 8

5.5 Calculating Outage Deductions

Outage Deductions will apply and be calculated in accordance with Section 5.5(d) below in any month where the applicable performance standard set out in Section 2.1 of this Schedule 8 for the Availability of the Node Sites, Service Level 1 Sites or Service Level 3 Sites is not met. To determine if such performance standard is infringed, the Availability of Node Sites, Service Level 1 Sites or Service Level 3 Sites in any month is calculated in each case in accordance with Sections 5.5(a) to (c) below.

(a) Potential Monthly Availability

For the purposes of calculating the Availability of all Sites, the Potential monthly Availability is calculated as follows:

$$PMA_m = S_m \times d_m \times M$$

where:

- PMA_m = Potential Monthly Availability minutes in respect of month m
 S_m = The number of Node Sites, Service Level 1 Sites, or Service Level 3 Sites, as the context requires, that have achieved Site Completion prior to month m
 d_m = The number of days in month m
 M = The number of minutes in a day, being 1,440

(b) Outage Minutes During a Month

Outage Minutes for the Sites are calculated as follows:

$$TOM_m = \sum_m TOM_x = \sum_m (S_x \times OM_x)$$

where:

- TOM_m = Total Outage Minutes in respect of month m
 TOM_x = Total Outage Minutes in respect of an Outage x
 S_x = The number of Node Sites, Service Level 1 Sites, or Service Level 3 Sites, as the context requires, rendered not Available as a result of Outage x
 OM_x = The duration of Outage x , in minutes, calculated in accordance with Section 5.8 and Section 5.9 of this Schedule 8

(c) Monthly Availability

Monthly Availability in respect of month m , for the Sites, is calculated in accordance with the following formula:

$$MA_m = \frac{PMA_m - TOM_m}{PMA_m}$$

where:

- MA_m = Monthly Availability in respect of month m , expressed as a percentage and rounded to 2 decimal places
- PMA_m = Potential Monthly Availability for the Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, in respect of month m , calculated in accordance with Section 5.5(a)
- TOM_m = Total Outage Minutes for the Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, in respect of month m , calculated in accordance with Section 5.5(b)

(d) **Total Outage Deductions**

When applicable, Outage Deductions are calculated in accordance with the following formula:

$$TOD_m = SA_m \times SV_m \times SM \times DP_m$$

where:

- TOD_m = The Total Outage Deduction for the Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, for the relevant month m
- SA_m = The simple average of Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, affected by Outages in the relevant month m
- SV_m = The Site Value for the relevant month m , calculated in accordance with Section 5.3 of this Schedule 8
- SM = The applicable Site Multiplier for Node Sites, Service Level 1 Sites, or Service Level 3 Sites, equal to 12, 6 or 1, as the context requires
- DP_m = The Deduction Percentage for the Availability performance standard for the relevant month m for Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, calculated in accordance with Section 2

Worked Example 2: Calculating Outage Deductions

It is March 2018. At the start of the month, Project Co had achieved Site Completion for 28 Node Sites, 250 Service Level 1 Sites and 500 Service Level 3 Sites. During March 2018, a further 13 Service Level 1 Sites and 29 Service Level 3 Sites achieve Site Completion. The Maximum Availability Payment for March 2018 is \$2.37 million, which corresponds to an escalated Site Value for Deductions of \$820.57.

The Outages that occurred in March 2018 are listed below.

Site Category	Equipment-Only Outages	Fiber Outages
Node Sites	<ul style="list-style-type: none"> • 1 x 5 Sites, 180 minutes • 1 x 3 Sites, 360 minutes 	<ul style="list-style-type: none"> • 1 x 4 Sites, 800 minutes • 1 x 1 Site, 953 minutes

Site Category	Equipment-Only Outages	Fiber Outages
	<ul style="list-style-type: none"> • 1 x 8 Sites, 30 minutes 	
Service Level 1 Sites	<ul style="list-style-type: none"> • 1 x 50 Sites, 250 minutes • 1 x 7 Sites, 600 minutes • 1 x 15 Sites, 140 minutes • 1 x 100 Sites, 60 minutes • 1 x 15 Sites, 400 minutes 	<p>Caused by Fiber Outages at Nodes</p> <ul style="list-style-type: none"> • 1 x 20 Sites, 1000 minutes • 1 x 5 Sites, 1150 minutes <p>Caused by Fiber Outages on Laterals</p> <ul style="list-style-type: none"> • Excluded from deductions calculation
Service Level 3 Sites	<ul style="list-style-type: none"> • 1 x 400 Sites, 180 minutes • 1 x 50 Sites, 450 minutes • 1 x 75 Sites, 65 minutes • 20 x 10 Sites, 50 minutes 	<p>Caused by Fiber Outages at Nodes</p> <ul style="list-style-type: none"> • 1 x 50 Sites, 2000 minutes • 1 x 10 Sites, 3500 minutes <p>Caused by Fiber Outages on Laterals</p> <ul style="list-style-type: none"> • Excluded from deductions calculation

Calculate Project Co's compliance with the Availability performance standard and, if applicable, calculate the total amount of deductions.

Node Sites: Calculation Steps:

- 1) Calculate Potential Monthly Availability

$$PMA_{\frac{3}{18}} = (28 \text{ Node Sites} \times 31 \text{ days} \times 1,440 \text{ minutes per day})$$

$$= 1,249,920 \text{ minutes}$$

- 2) Calculate Outage Minutes for the Month

$$TOM_{\frac{3}{18}} = (5 \times 180) + (3 \times 360) + (8 \times 30) + (4 \times 800) + (1 \times 953)$$

$$= 6,373 \text{ minutes}$$

- 3) Calculate Monthly Availability

$$MA_{\frac{3}{18}} = \frac{(1,249,920 \text{ minutes} - 6,373 \text{ minutes})}{1,249,920 \text{ minutes}} = 99.49\% < 99.90\%$$

Deductions Apply

- 4) Calculate Total Outage Deductions if Performance Standard is Breached

Assuming that Project Co met the 99.9% Availability requirement for Node Sites in the prior month, the Deduction Percentage for the period is equal to 10%.

$$TOD_{\frac{3}{18}} = \frac{5 + 3 + 8 + 4 + 1 \text{ Affected Sites}}{5 \text{ Outages}} \times \$820.57 \times 12 \text{ Node Multiplier} \times 10\%$$

$$TOD_{\frac{3}{18}} = \$4,136 \text{ Total Outage Deduction for Node Sites}$$

Service Level 1 Sites: Calculation Steps

- 1) Calculate Potential Monthly Availability

$$PMA_{\frac{3}{18}} = (250 \text{ minutes} \times 31 \text{ days} \times 1,440 \text{ minutes per day}) \\ = 11,160,000 \text{ minutes}$$

- 2) Calculate Outage Minutes for the Month

Fiber Outages on the laterals are excluded from the calculation of Outage Minutes.

$$TOM_{\frac{3}{18}} = \left(\begin{array}{l} (50 \times 250) + (7 \times 600) + (15 \times 140) + (100 \times 60) \\ + (15 \times 400) + (20 \times 1000) + (5 \times 1150) \end{array} \right) = 56,550 \text{ minutes}$$

- 3) Calculate Monthly Availability

$$MA_{\frac{3}{18}} = \frac{(11,160,000 \text{ minutes} - 56,500 \text{ minutes})}{11,160,000 \text{ minutes}} = 99.49\% < 99.90\%$$

Deductions Apply

- 4) Calculate Total Outage Deductions if Performance Standard is Breached

Assuming this is the second consecutive month Project Co has not met the 99.9% Availability requirement for Service Level 1 Sites, the Deduction Percentage for the period is equal to 25%.

$$TOD_{\frac{3}{18}} = \frac{50 + 7 + 15 + 100 + 15 + 20 + 5 \text{ Site Outages}}{7 \text{ Outages}} \\ \times \$820.57 \times 6 \text{ SL1 Multiplier} \times 25\%$$

$$TOD_{\frac{3}{18}} = \$37,277 \text{ Total Outage Deduction for SL1 Sites}$$

Service Level 3 Sites: Calculation Steps

- 1) Calculate Potential Monthly Availability

$$PMA_{\frac{3}{18}} = (500 \text{ minutes} \times 31 \text{ days} \times 1,440 \text{ minutes per day}) \\ = 22,320,000 \text{ minutes}$$

- 2) Calculate Outage Minutes for the Month

Only Outage Minutes that occur during Regular Business Hours are included in this calculation.

$$TOM_{\frac{3}{18}} = \left(\begin{array}{l} (400 \times 180) + (50 \times 450) + (75 \times 65) + (20 \times 10 \times 50) \\ + (50 \times 2000) + (10 \times 3500) \end{array} \right) \\ = 244,375 \text{ minutes}$$

3) Calculate Monthly Availability

$$MA_{\frac{3}{18}} = \frac{(22,320,000 \text{ minutes} - 244,375 \text{ minutes})}{22,320,000 \text{ minutes}} = 98.91\% < 99.00\%$$

Deductions Apply

4) Calculate Total Outage Deductions if Performance Standard is Breached

Assuming that Project Co met the 99.0% Availability requirement for Service Level 3 Sites in the prior month, the Deduction Percentage for the period is equal to 10%.

$$TOD_{3/18} = \frac{400 + 50 + 75 + (20 \times 10) + 50 + 10 \text{ (Sites)}}{25 \text{ Outages}} \times \$820.57 \times 1 \times 10\%$$

$$OD_{3/18} = \$2,577 \text{ Total Outage Deduction for SL3 Sites}$$

Total Outage Deductions

$$OD_{3/18} = \$4,136 \text{ (Nodes)} + \$37,277 \text{ (SL1)} + \$2,577 \text{ (SL3)} = \$43,990$$

5.6 Calculating Respond Deductions

(a) **Node Sites and Service Level 1 Sites**

Respond Deductions for Node Sites and Service Level 1 Sites are calculated on an occurrence basis. The monthly Respond Deductions are calculated as follows:

$$RSP_m = R1_m \times \$500 + R2_m \times \$750 + R3_m \times \$1,000$$

where:

- RSP_m = The Respond Deduction for Node Sites or Service Level 1 Sites, as the context requires, for the relevant month m
- $R1_m$ = The number of Outages for Node Sites or Service Level 1 Sites, as the context requires, for which Project Co's response time was between 4 hours 1 minute and 4 hours 30 minutes, in the relevant month m
- $R2_m$ = The number of Outages for Node Sites or Service Level 1 Sites, as the context requires, for which Project Co's response time was between 4 hours 31 minutes and 5 hours, in the relevant month m
- $R3_m$ = The number of Outages for Node Sites or Service Level 1 Sites, as the context requires, for which Project Co's response time was greater than 5 hours, in the relevant month m

(b) **Service Level 3 Sites**

Respond Deductions for Service Level 3 Sites are calculated on an occurrence basis and incorporate the performance standards set out in Section 2.1 above and as further described in Section 5.1(f) above.

(1) **Determine if the Service Level 3 Performance Standard is Breached**

Project Co's performance in responding to Outages at Service Level 3 Sites within 5 hours of notification for a given month m will be measured as follows:

$$RSP_m = \frac{\sum_m R}{\sum_m O}$$

where:

- RSP_m = Project Co's performance for month m in respect of responding to Outages within 5 hours of notification
- R = An occurrence in which Project Co responds to an Outage within 5 hours of notification
- O = The aggregate number of Outages in month m

(2) **Calculating the Mean Time to Respond to Outages**

The Mean Time to Respond to Outages for Service Level 3 Sites is calculated as follows:

$$MTTRSP_m = \frac{\sum_m OM}{\sum_m O}$$

where:

- $MTTRSP_m$ = The Mean Time to Respond to Outages impacting Service Level 3 Sites in the relevant month m
- $\sum_m OM$ = The aggregate number of minutes for Project Co to respond to all Outages impacting Service Level 3 Sites in the relevant month m
- $\sum_m O$ = The aggregate number of Outages in month m

(3) Monthly Deductions

If Project Co does not meet the performance standard of responding to 90% of Outages impacting Service Level 3 Sites within 5 hours of notification in a given month, and the Mean Time to Respond to Outages impacting Service Level 3 Sites in a month is more than 5 hours, the Monthly Respond Deductions are calculated in accordance with the following formula:

$$RSP_m = S3_m \times SV_m \times SM \times DP_m$$

where:

- RSP_m = The Respond Deduction for Service Level 3 Sites in the relevant month m
- $S3_m$ = The simple average of Service Level 3 Sites affected by the Outages in the relevant month m , rounded up to the nearest integer
- SV_m = The Site Value for the relevant month m , calculated in accordance with Section 5.3 of this Schedule 8.
- SM = The Site Multiplier for Service Level 3 Sites, equal to 1
- DP_m = The Deduction Percentage for breach of the Mean Time to Respond performance standard for the relevant month m for Service Level 3 Sites, calculated in accordance with Section 2 of this Schedule 8

(4) Total Respond Deductions

The total Respond Deductions for month m will be the sum of the Respond Deductions calculated in Sections 5.6(a) and 5.6(b)(3).

Worked Example:

It is May 2030. The Maximum Availability Payment for May 2030 is \$4.35 million, which corresponds to an escalated Site Value for Deductions of \$1,502.55. The Outages that occurred during May 2030 and Project Co’s response time to each Outage are listed below:

Site Category	Equipment-Only Outages	Fiber Outages
Node Sites	<ul style="list-style-type: none"> • 1 x 60 minutes • 1 x 240 minutes • 1 x 45 minutes • 1 x 105 minutes 	<ul style="list-style-type: none"> • 1 x 375 minutes • 1 x 225 minutes • 1 x 300 minutes • 1 x 495 minutes
Service Level 1 Sites	<ul style="list-style-type: none"> • 5 x 180 minutes • 10 x 240 minutes • 8 x 300 minutes • 3 x 75 minutes 	<ul style="list-style-type: none"> • 5 x 600 minutes • 10 x 225 minutes • 5 x 270 minutes
Service Level 3 Sites	<ul style="list-style-type: none"> • 15 x 315 minutes, 30 sites each event • 25 x 285 minutes, 17 sites each event • 3 x 535 minutes, 100 sites each event 	<ul style="list-style-type: none"> • 1 x 1,990 minutes, 250 sites • 10 x 265 minutes, 78 sites each event • 8 x 325 minutes, 150 sites each event

Calculate Project Co's compliance with the Mean Time to Respond performance standard and, if applicable, calculate the total amount of deductions.

Calculation Steps: Node Sites

- 1) Calculate the Number of Performance Breaches and their Severity

Response times will be rounded up to the nearest minute. For example, a response time of 242 minutes and 30 seconds will be rounded up to 243 minutes, and will be categorized as an R1 performance breach.

$$R1 = 241 \text{ to } 270 \text{ minutes} = 0$$

$$R2 = 271 \text{ minutes to } 300 \text{ minutes} = 1$$

$$R3 = > 300 \text{ minutes} = 2$$

- 2) Calculate Respond Deductions for the Month

$$RSP_{5/30} = (0 \times \$500) + (1 \times \$750) + (2 \times \$1,000) = \$2,750$$

Calculation Steps: Service Level 1 Sites

- 1) Calculate the Number of Performance Breaches and their Severity

$$R1 = 241 \text{ to } 270 \text{ minutes} = 5$$

$$R2 = 271 \text{ minutes to } 300 \text{ minutes} = 8$$

$$R3 = > 300 \text{ minutes} = 5$$

- 2) Calculate Respond Deductions for the Month

$$RSP_{5/30} = (5 \times \$500) + (8 \times \$750) + (5 \times \$1,000) = \$13,500$$

Calculation Steps: Service Level 3 Sites

- 1) Calculate if the Service Level 3 Performance Standard is Breached

$$RSP = \frac{(25 + 10) \text{ Responses } < 5 \text{ Hours}}{(15 + 25 + 3 + 1 + 10 + 8) \text{ Outages}} = 56.4\%$$

$$56.4\% < 90.0\% = \text{Deductions Apply}$$

2) Calculate Mean Time to Respond for the Month

$$MTTRSP_{5/30} = \frac{\left(\begin{array}{l} (15 \text{ Outages} \times 315 \text{ Minutes}) + \\ (25 \times 285) + (3 \times 535) + (1 \times 1990) + (10 \times 265) + (8 \times 325) \end{array} \right)}{(15 + 25 + 3 + 1 + 10 + 8) \text{ Outages}}$$

$$MTTRSP_{5/30} = 334 \text{ minutes} > 5 \text{ hours}$$

First Tier of Deductions (10%)

3) Calculate Respond Deductions if Performance Standard is Breached

$$RSP_{5/30} = \frac{\begin{array}{l} (15 \text{ Outages} \times 30 \text{ Sites}) \\ + (25 \times 17) + (3 \times 100) + \\ (1 \times 250) + (10 \times 78) + (8 \times 150) \end{array}}{(15 + 25 + 3 + 1 + 10 + 8) \text{ Outages}} \times \$1,502.55 \times 1 \text{ SL1 Multiplier} \times 10\%$$

$$RSD_{5/30} = \$8,252$$

Total Respond Deductions

$$RSP_{5/30} = \$2,750 + \$13,500 + \$8,252 = \$24,502$$

5.7 Calculating Restoration Deductions

Subject to Section 5.1 of this Schedule 8, the total amount of the Restoration Deductions to be made in respect of each month *m* shall be determined in accordance with the following formula:

$$RST_m = RST_{E,m} + RST_{F,m}$$

Where:

- RST_m = Restoration Deduction in respect of month *m*
- $RST_{E,m}$ = The aggregate of the Restoration Deduction for Equipment-Only Outages applicable to each of the Node Sites, Service Level 1 Sites and Service Level 3 Sites, for the relevant month *m*, calculated in accordance with this Section 5.7
- $RST_{F,m}$ = The Restoration Deduction for Fiber Outages relevant to Node Sites for the relevant month *m*, calculated in accordance with this Section 5.7

(a) **Restoration Deductions for Equipment-Only Outages**

Restoration Deductions in respect of Equipment-Only Outages impacting Node Sites will only apply if Project Co does not meet the performance standard of restoring 80% of such Equipment-Only Outages within 6 hours, calculated as follows:

1) Determine if Mean Time to Restore for Node Sites Infringes the Event Performance Standard

$$RST_m = \frac{\sum_m R}{\sum_m EO}$$

where:

RST_m = Project Co's performance for month m in respect of restoring 80% of Equipment-Only Outages at the Node Sites within 6 hours

R = An occurrence in which Project Co restores an Equipment-Only Outage at a Node Site within 6 hours of notification

EO = The aggregate number of Equipment-Only Outages at Node Sites in month m

2) Calculating the Mean Time to Restore for Equipment-Only Outages

The Mean Time to Restore for Equipment-Only Outages for the Sites is calculated as follows:

$$MTTR_{E,m} = \frac{\sum_m OM}{\sum_m O}$$

where:

$MTTR_{E,m}$ = The Mean Time to Restore all Equipment-Only Outages impacting Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, for the relevant month m

$\sum_m OM$ = The aggregate number of minutes, for Project Co to restore Equipment-Only Outages impacting Node Sites, Service Level 1 Sites, or Service Level 3 Sites, as the context requires, for the relevant month m

$\sum_m O$ = The aggregate number of Equipment-Only Outages impacting Node Sites, Service Level 1 Sites, or Service Level 3 Sites, as the context requires, in month m

3) Monthly Restoration Deductions for Equipment-Only Outages

The monthly Restoration Deductions for Equipment-Only Outages for all Sites where the applicable performance standards have been infringed are calculated in accordance with the following formula:

$$RST_{E,m} = S_m \times SV_m \times SM \times DP_m$$

where:

- $RST_{E,m}$ = The Restoration Deduction applicable to Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, for the relevant month m
- S_m = The simple average of Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, affected by Equipment-Only Outages in the relevant month m , rounded up to the nearest integer
- SV_m = The Site Value for the relevant month m , calculated in accordance with Section 5.3 of this Schedule 8
- SM = The applicable Site Multiplier for Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, equal to 12, 6 or 1 respectively
- DP_m = The Deduction Percentage for infringing the Mean Time to Restore performance standard for the relevant month m for Equipment-Only Outages impacting the Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, calculated in accordance with Section 2 of this Schedule 8

(b) **Performance Standard for Fiber Outages**

The performance standard for Project Co to restore Fiber Outages for Node Sites is equal to a Mean Time to Restore of up to 12 hours.

1) Calculating the Mean Time to Restore for Fiber Outages

The Mean Time to Restore for Fiber Outages impacting the Node Sites is calculated as follows:

$$MTTR_{F,m} = \frac{\sum_m OM_F}{\sum_m O}$$

where:

- $MTTR_{F,m}$ = The Mean Time to Restore all Fiber Outages impacting Node Sites for the relevant month m
- $\sum_m OM_F$ = The aggregate Restoration Time in month m in respect of Fiber Outages impacting Node Sites
- $\sum_m O$ = The aggregate number of Fiber Outages impacting Node Sites in month m

(c) **Monthly Deductions for Restoration of Fiber Outages**

Where the Mean Time to Restore for Fiber Outages impacting the Node Sites exceeds the performance standard set out in Section 5.7(b), the monthly Restoration Deductions for Fiber Outages impacting the Node Sites are calculated in accordance with the following formula:

$$RST_{F,m} = S_m \times SV_m \times SM \times DP_m$$

where:

- $RST_{F,m}$ = The Restoration Deduction for Fiber Outages on a Ring for the relevant month m
- S_m = The simple average of Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, affected by Fiber Outages on the Ring in the relevant month m , rounded up to the nearest integer
- SV_m = The Site Value for the relevant month m , calculated in accordance with Section 5.3 of this Schedule 8
- SM = The Site Multiplier for Node Sites, Service Level 1 Sites or Service Level 3 Sites, as the context requires, equal to 12, 6 and 1 respectively
- DP_m = The Deduction Percentage for breach of the Mean Time to Restore performance standard for the relevant month m for Fiber Outages on a Ring, calculated in accordance with Section 2 of this Schedule 8

Worked Example:

It is May 2030. The Maximum Availability Payment for May 2030 is \$4.12 million, based on an escalated Site Value for Deductions of \$1,502.55. The Outages that occurred during May 2030 and Project Co's response time to each Outage are listed below:

Site Category	Equipment-Only Outages	Fiber Outages
Node Sites	<ul style="list-style-type: none"> • 1 x 760 minutes, 3 sites (breach) • 1 x 240 minutes, 5 sites • 1 x 650 minutes, 8 sites (breach) • 1 x 300 minutes, 2 sites 	<ul style="list-style-type: none"> • 1 x 1,500 minutes 5 Nodes, 30 SL1s, 100 SL3s • 1 x 1,000 minutes 3 Nodes, 13 SL1s, 25 SL3s • 1 x 2,500 minutes 1 Node, 3 SL1s, 5 SL3s • 1 x 480 minutes 10 Nodes, 100 SL1s, 250 SL3s
Service Level 1 Sites	<ul style="list-style-type: none"> • 5 x 1000 minutes, 50 sites each event • 10 x 650 minutes, 14 sites each event • 8 x 400 minutes, 26 sites each event • 3 x 200 minutes, 100 sites each event 	<ul style="list-style-type: none"> • Cuts on the Laterals are excluded from the deductions calculation
Service Level 3 Sites	<ul style="list-style-type: none"> • 15 x 615 minutes, 65 sites each event • 25 x 585 minutes, 15 sites each event • 3 x 2735 minutes, 237 sites each event 	<ul style="list-style-type: none"> • Cuts on the Laterals are excluded from the deductions calculation

Calculation Steps: Equipment-Only Outages for Node Sites

- 1) Determine if the Performance Standard is Breached

$$RST = \frac{(1 + 1) \text{ Restorations } < 6 \text{ Hours}}{(1 + 1 + 1 + 1) \text{ Outages}} = 50.0\%$$

50.0% < 80.0% = Deductions Apply

- 2) Calculate Mean Time to Restore for the Month

$$MTTR_{5/30} = \frac{(760 + 240 + 650 + 300 \text{ Outage Minutes})}{4 \text{ Outages}} = 487.50 \text{ minutes}$$

The Mean Time to Restore for the month, being 8 hours 8 minutes, places Project Co in the first tier of the Deduction Percentage, equal to 10%.

- 3) Calculate Restoration Deductions if Performance Standard is Breached

$$RST_{5/30} = \frac{(3 + 5 + 8 + 2) \text{ Sites Affected}}{4 \text{ Outages}} \times \$1,502.55 \times 12 \text{ Node Multiplier} \times 10\%$$

$$RST_{5/30} = \$9,015$$

Calculation Steps: Fiber Outages for Node Sites

- 1) Calculate the Performance Standard

$$DT = 12 \text{ hours}$$

- 2) Calculate Mean Time to Restore for the Month

$$MTTR_{5/30} = \frac{(1,500 + 1,000 + 2,500 + 480) \text{ Restore Times}}{4 \text{ Outages}} = 1,370 \text{ minutes}$$

22 hours 50 minutes > 12 hours

Deductions Apply

- 3) Calculate Restoration Deductions if Performance Standard is Breached

The Mean Time to Restore for the month is 22 hours, 50 minutes, placing Project Co in the third tier of the Deduction Percentage, equal to 50%.

$$RST_{5/30} = \frac{(5 + 3 + 1 + 10) \text{ Sites Affected}}{4 \text{ Outages}} \times \$1,502.55 \times 12 \text{ Node Multiplier} \times 50\%$$

$$RST_{5/30} = \$42,823$$

Calculation Steps: Equipment-Only Outages for Service Level 1 Sites

- 1) Calculate the Performance Standard

$$DT = 8 \text{ hours}$$

- 2) Calculate Mean Time to Restore for the Month

$$MTTR_{5/30} = \frac{((5 \text{ Outages} \times 1,000 \text{ min Restore time}) + (10 \times 650) + (8 \times 400) + (3 \times 200))}{(5 + 10 + 8 + 3) \text{ Outages}} = 588.46 \text{ average minutes}$$

$$9 \text{ hours } 49 \text{ minutes} > 8 \text{ hours}$$

Deductions Apply

- 3) Calculate Restoration Deductions if Performance Standard is Breached

The Mean Time to Restore for the month is 9 hours 49 minutes, placing Project Co in the first tier of Deduction Percentage, equal to 10%.

$$RST_{5/30} = \frac{(5 \text{ Outages} \times 50 \text{ Sites Affected}) + (10 \times 14) + (8 \times 26) + (3 \times 200)}{(5 + 10 + 8 + 3) \text{ Outages}} \times \$1,502.55 \times 6 \text{ SL 1 Multiplier} \times 10\%$$

$$RST_{5/30} = \$41,540$$

Calculation Steps: Equipment-Only Outages for Service Level 3 Sites

- 1) Calculate the Performance Standard

$$DT = 8 \text{ hours}$$

- 2) Calculate Mean Time to Restore for the Month

$$MTTR_{5/30} = \frac{(15 \times 615 + 25 \times 585 + 3 \times 2735)}{(15 + 25 + 3)} = 745.47 \text{ minutes}$$

$$12 \text{ hours } 25 \text{ minutes} > 8 \text{ hours}$$

Deductions Apply

3) Calculate Restoration Deductions if Performance Standard is Breached

The Mean Time to Restore for the month is 12 hours 25 minutes, placing Project Co in the second tier of Deduction Percentage, equal to 25%.

$$RST_{5/30} = \frac{(15 \text{ Outages} \times 65 \text{ Sites Affected}) + (25 \times 15) + (3 \times 237)}{(15 + 25 + 3) \text{ Outages}} \times \$1,502.55 \times 1 \text{ SL3 Multiplier} \times 25\%$$

$$RST_{5/30} = \$18,004$$

Total Restoration Deductions

$$RST_{5/30} = \$9,015 + \$42,823 + \$41,540 + \$18,004 = \$111,382$$

5.8 Duration of an Outage for Node Sites and Service Level 1 Sites

- (a) The duration of an Outage, and the duration of the restoration time in respect of such Outage for purposes of calculating Restoration Deductions in Section 5.7, in respect of Node Sites and Service Level 1 Sites, will:
 - (1) start at the time that the Network Operations Center creates a NOC Incident Ticket in the Ticketing System;
 - (2) end at the time that the Network Operations Center determines that all Node Sites or Service Level 1 Sites, as the context requires, are Available and the applicable NOC Incident Ticket is set to 'restored' in the Ticketing System; and
 - (3) exclude any minutes during which Project Co, the Project Contractors or the Sub-Contractors do not have Access to the Site or element of the NG-KIH System at the origin of the Outage.
- (b) Where an Outage persists from one month to the following month, the Outage is deemed to be one Outage occurring only in the month in which it starts in accordance with Section 5.8(a)(1) above. If the Outage persists into the subsequent month, all minutes in respect of that Outage will be captured in the month in which such Outage occurs. The start and end times for Outages described above will be logged by the Network Operations Center and reported to Project Co as part of the Performance Monitoring Report in Section 8.1 of this Schedule 8.

5.9 Duration of an Outage for Service Level 3 Sites

- (a) The duration of an Outage will, and the duration of the restoration time in respect of such Outage for purposes of calculating Restoration Deductions in Section 5.7, in respect of Service Level 3 Sites, will:
 - (1) start at the time that the Network Operations Center creates a NOC Incident Ticket in the Ticketing System;

- (2) end at the time that the Network Operations Center determines that all Service Level 3 Sites are Available and the applicable NOC Incident Ticket is set to 'restored' status in the Ticketing System;
 - (3) exclude all minutes between 5:00pm and 8:00am on the following day; and
 - (4) exclude any minutes during which Project Co, the Project Contractors or the Sub-Contractors do not have Access to the Site or element of the NG-KIH System at the origin of the Outage.
- (b) Where an Outage persists from one month to the following month, the Outage is deemed to be one Outage occurring only in the month in which it starts in accordance with Section 5.9(a)(1) above. If the Outage persists into the subsequent month, all minutes in respect of that Outage will be captured in the month in which such Outage occurs.
 - (c) The start and end times for Outages described above will be logged by the Network Operations Center and reported to Project Co as part of the Performance Monitoring Report in Section 8.1.

5.10 Duration of Response Times

The duration of the response time for an Outage for the purposes of calculating any Response Deduction in accordance with Section 5.6 will:

- (a) start at the time the Network Operations Center creates a NOC Incident Ticket in the Ticketing System;
- (b) in respect of any Equipment-Only Outage that does not require attendance by a field technician or construction crew at any Site or Field Location, end when the applicable NOC Incident Ticket is set to "acknowledged" status in the Ticketing System; and
- (c) in respect of any Equipment-Only Outage or Fiber Outage that does require attendance by a field technician or construction crew at a Site or Field Location, end when the field technician or construction crew has arrived at the applicable Site or Field Location.

6. POLE ATTACHMENT RENEWAL ADJUSTMENT

6.1 Pole Counts and Baseline Pole Attachment Costs

- (a) Project Co and the Authority have undertaken commercially reasonable efforts to confirm the number of poles owned or managed by the Pole Providers. The Baseline Pole Attachment Costs as of the Effective Date are calculated on Project Co's best estimates of such number of poles for the Material Telecommunications Companies.
- (b) The annual pole attachment rates and pole counts included in the Financial Model as at the Effective Date are set out in Appendix 8A.

- (c) The aggregate annual pole attachment costs set out in Appendix 8A as at the Effective Date and included in the Maximum Availability Payment, stated in terms of the Base Date, are \$973,081 (the “**Baseline Pole Attachment Costs**”).

6.2 Annual Reconciliation and Adjustment

- (a) At the end of each Fiscal Year, Project Co will deliver to the Authority an update of the information set out in Appendix 8A, which will include:

- (1) the actual annual pole attachment rates for each Pole Attachment Agreement paid during the Fiscal Year, and which will apply for the following Fiscal Year; and
- (2) an update of the actual pole count numbers for the Material Telecommunications Companies.

Project Co will further specify the aggregate annual pole attachment costs paid during such Fiscal Year based on the updated pole attachment rates specified in Section 6.2(a)(1) above and the updated pole count numbers for the Material Telecommunications Companies specified in Section 6.2(a)(2) above (the “**Adjusted Pole Attachment Costs**”). For greater certainty, changes in pole count numbers for any Pole Provider other than the Material Telecommunications Companies will not be included in any such update or determination of the Adjusted Pole Attachment Costs.

- (b) To the extent that the Adjusted Pole Attachment Costs are higher or lower than the Baseline Pole Attachment Costs, as indexed for the prior Fiscal Year in accordance with Section 4.4(d), then:

- (1) Project Co will include the amount of the Adjusted Pole Attachment Costs minus such indexed Baseline Pole Attachment Costs as a positive or negative payment adjustment for the final month of the Fiscal Year, in accordance with Section 9.1(b)(2) of this Schedule 8; and
- (2) the Baseline Pole Attachment Costs shall then be reset to equal the Adjusted Pole Attachment Costs, and the Maximum Availability Payment for the subsequent Fiscal Year shall be increased or decreased (prior to indexation in accordance with Section 4.4) so that the amount paid by the Authority for pole attachment costs reflects such reset Baseline Pole Attachment Costs.

- (c) For further clarity, the Adjusted Pole Attachment Costs will assume that all pole attachment costs are paid on a monthly basis, such that there will be no adjustment to the Maximum Availability Payment to reflect any annual prepayment of pole attachment costs.

6.3 Authority Rights and Obligations

- (a) Project Co will request revised pole attachment rates from each Pole Provider no less than 3 months prior to the expiry date of the most current Pole Attachment Agreement for such Pole Provider.

- (b) Within 10 days of receiving revised pole attachment rates from a Pole Provider, Project Co will notify the Authority of any increases in the renewal rate, including a comparison to the existing pole attachment rate for such Pole Provider.
- (c) No more than 4 weeks prior to the expiry of any Pole Attachment Agreement, the Authority will have the option to replace Project Co in negotiating the renewal rate with the applicable Pole Provider.

7. MARKET TESTING ADJUSTMENT

7.1 Project Co Proposal or Market Testing Proposal

- (a) Project Co will include in its Project Co Proposal the adjustment, relative to the Baseline Services Costs, that will be required to the Maximum Availability Payment to meet the revised Services Specifications.
- (b) If the Project Co Proposal is not accepted by the Authority in accordance with Schedule 19 [Market Testing Procedure], Project Co will, upon receipt of a Market Testing Proposal, calculate the adjustment that will be required to the Maximum Availability Payment to meet the revised Services Specifications.
- (c) If the Market Testing Proposal is not accepted by the Authority, no adjustment will be made to the Maximum Availability Payment.
- (d) Any adjustment required to the Maximum Availability Payment will be made in accordance with the provisions of Schedule 19 [Market Testing Procedure].
- (e) Project Co, as part of the inclusion of the required adjustment to the Maximum Availability Payment, will include any amendments to the escalation tiers described in Section 4.3(a).

7.2 System Refresh

- (a) In accordance with Schedule 19 [Market Testing Procedure], the annual costs and expected timeline of the First System Refresh and Second System Refresh will be included in the final Project Co Proposal or Market Testing Proposal that is approved by the Authority.
- (b) The Authority will have the option to fund the costs of the First System Refresh and the Second System Refresh through:
 - (1) a lump sum payment, covering 100% of the costs of the First System Refresh or the Second System Refresh, paid directly to Project Co at the commencement of the First System Refresh or Second System Refresh;
 - (2) temporary, monthly adjustments to the Availability Payment, made only during the periods in which works relevant to the First System Refresh or Second System Refresh are undertaken by Project Co, where such adjustments are sized to directly cover 100% of the costs of such works; or
 - (3) permanent monthly adjustments to the Availability Payment, where such adjustments are agreed between the Authority and Project Co with reference to the Financial Model. This payment option is subject to Project Co's ability, on a best efforts basis, to raise sufficient financing to

fund the capital costs of the First System Refresh or Second System Refresh.

- (c) In the event that neither the Project Co Proposal or the Market Testing Proposal is acceptable to the Authority, the provisions of Schedule 19 [Market Testing Procedure] will apply.

8. FAILURE BY PROJECT CO TO MONITOR OR REPORT

8.1 Performance Monitoring Report

The Performance Monitoring Report produced by Project Co for any Payment Period will be the initial source of the information regarding the performance of the Services for the relevant Payment Period for the purposes of calculating the relevant Deductions.

8.2 Reporting Errors

If any of the matters contained in a Performance Monitoring Report or other report submitted to the Authority are incorrect or the Performance Monitoring Report fails to refer to any Outage (each, a “**Reporting Error**”), then:

- (a) in the case of any Reporting Error which resulted in an overpayment by the Authority, Project Co will:
 - (1) if the Reporting Error occurred other than as a result of fraud, deliberate misrepresentation, gross negligence, incompetence or willful misconduct of Project Co, its employees or agents, or if the Reporting Error is discovered by Project Co and reported to the Authority prior to its discovery by the Authority, immediately pay to the Authority an amount equal to the amount overpaid by the Authority as a result of the Reporting Error, with interest at the Default Rate from the date of payment by the Authority to the date of repayment to the Authority; or
 - (2) if the Reporting Error occurred as a result of gross negligence or incompetence of Project Co, its employees or agents, Project Co will pay to the Authority an amount equal to twice the amount overpaid by the Authority as a result of the Reporting Error within thirty (30) days; or
 - (3) if the Reporting Error occurred as a result of fraud, deliberate misrepresentation, or willful misconduct, immediately pay to the Authority an amount equal to four times the amount overpaid by the Authority as a result of the Reporting Error; and
 - (4) the Authority may deduct the payments described in this Sections 8.2(a)(1) to (3) from the Availability Payment. Project Co will pay any amount left unpaid after application toward the Availability Payment within thirty (30) days; and
- (b) in the case of any Reporting Error which resulted in an underpayment by the Authority, the Authority will, if applicable, within thirty (30) days of the date the Authority approves of or agrees to the Reporting Error, acting reasonably, pay to Project Co an amount equal to the amount underpaid by the Authority as a result of the Reporting Error.

8.3 Parties to Advise of Reporting Errors

If, at any time, either the Authority or Project Co becomes aware of a Reporting Error, the party that discovers the Reporting Error will immediately advise the other party in writing of its nature and, if possible, its effect.

9. GENERAL PAYMENT PROVISIONS

9.1 Invoicing and Payment Arrangements

With respect to invoicing and payment the following will apply.

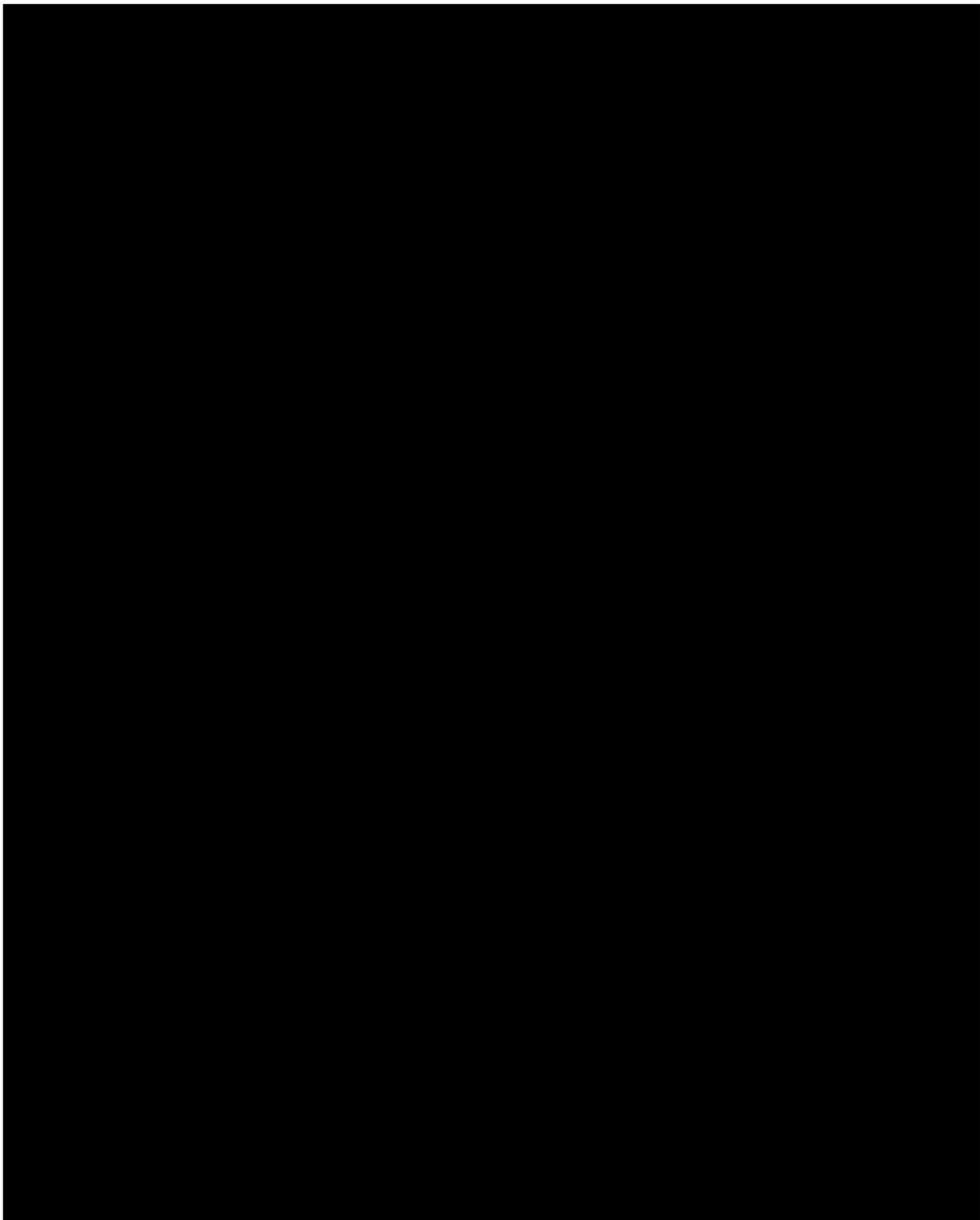
- (a) the Authority will pay all Availability Payments in arrears for each month;
- (b) within 10 Business Days following the commencement of each month, Project Co will provide the Authority with an invoice in a form agreed by the parties, acting reasonably, together with:
 - (1) a Performance Monitoring Report for the prior month; and
 - (2) a report (a “**Payment Adjustment Report**”) setting out any adjustments, including any applicable Deductions, to the Maximum Availability Payment for the prior month, and the amount of any over-payment or under-payment from any amount paid previously by the Authority;
- (c) the invoice will include as a minimum:
 - (1) the Availability Payment for the applicable month;
 - (2) any adjustments to a previous month, as set out in the applicable Payment Adjustment Report approved by the Authority;
 - (3) any amount owing to the Authority under this Project Agreement;
 - (4) any amount owing to Project Co under this Project Agreement; and
 - (5) the net amount owing by the Authority to Project Co, or by Project Co to the Authority, as applicable;
- (d) the Authority will:
 - (1) review each invoice submitted in accordance with this Section 9.1 within 5 Business Days;
 - (2) pay the amount approved by the Authority no later than 20 Business Days following receipt of the invoice; and
 - (3) concurrently advise Project Co of any amounts the Authority has not approved and the reasons for non-approval;
- (e) Project Co:
 - (1) will, after discussion and agreement with the Authority, clarify and resubmit an invoice for any amounts not approved by the Authority in any previously submitted invoice and the Authority will pay such agreed amounts in accordance with Section 9.1(d); and

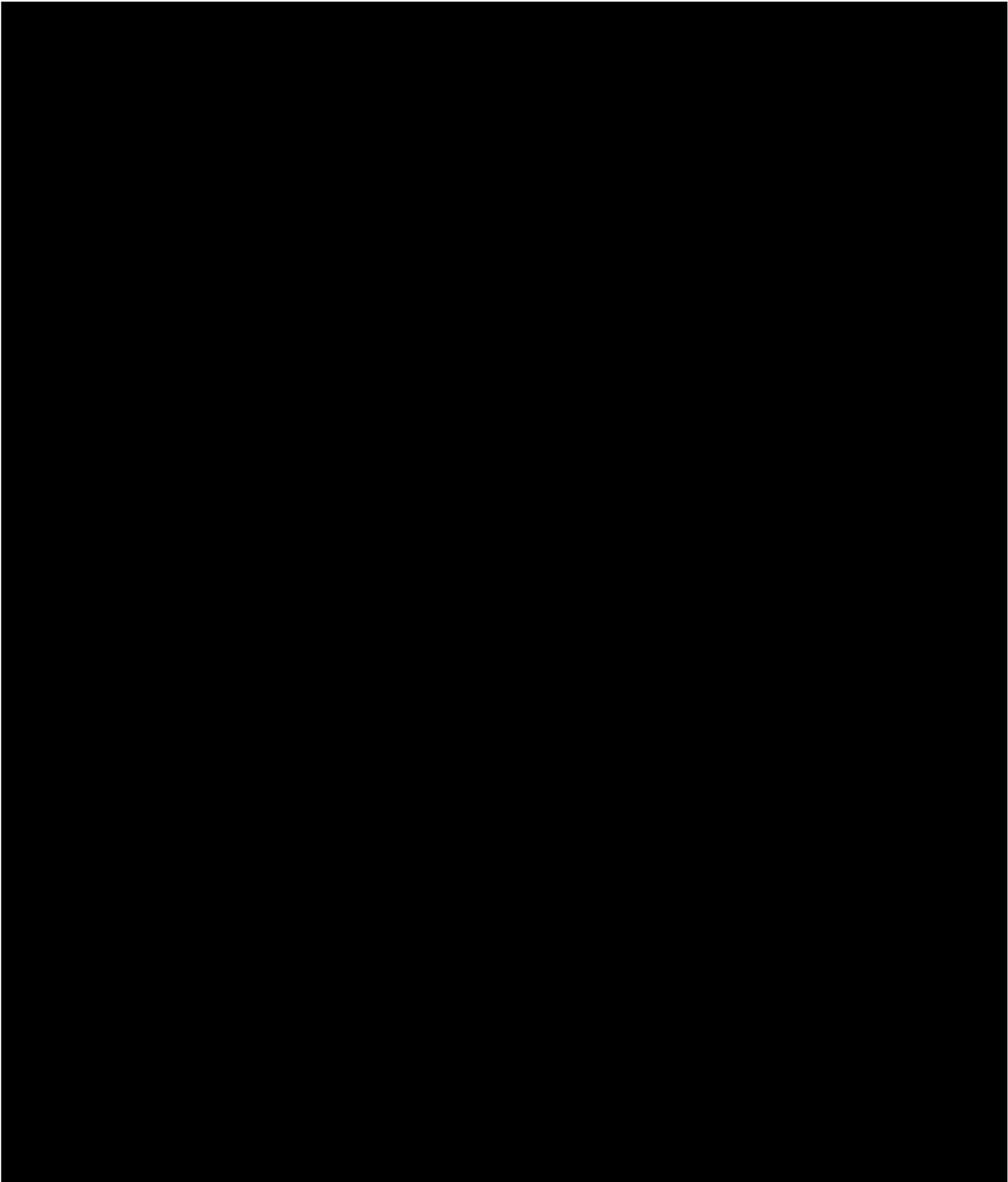
- (2) may refer for resolution pursuant to Dispute Resolution Procedure the amount of any invoice it has not agreed with the Authority;
- (f) the Authority will not be obligated to make any payment unless all conditions of payment in this Project Agreement have been satisfied;
- (g) Project Co will include with each invoice and Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the invoiced amounts and amounts set out in each Payment Adjustment Report; and
- (h) no payment will be construed as an acceptance or approval of incomplete, defective or improper Design, Construction or Services or any other matter provided by Project Co which is not in conformance with the requirements of this Project Agreement, and will not operate to relieve Project Co from any of its obligations under this Project Agreement.

10. JOINT REVIEW OF PAYMENT MECHANISM

10.1 Joint Review of Payment Mechanism

The parties agree to meet on or about the fifth (5th) anniversary following the first Site Completion Date and on or about every tenth (10th) anniversary thereafter to consider and, if agreed between the parties, address by way of an adjustment to the Maximum Availability Payment any material or sustained increases or decreases in operation and maintenance costs that were not foreseeable as of the Effective Date, in the case of any such increases, to the extent that such increases have or are reasonably likely to have a material adverse effect on Project Co's ability to continue to perform its obligations under this Project Agreement.





**SCHEDULE 9
COMPENSATION ON TERMINATION**

1. DEFINITIONS

In this Schedule 9, in addition to the terms defined in Schedule 1 [Definitions and Interpretation]:

“Employee Information” means written details related to employees employed by Project Co or any of the Project Contractors or Sub-Contractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;
- (b) the employment costs for such employees;
- (c) the amount of severance payable to such employees used in the calculation of any Employee Payments and all relevant information used in determining such amounts; and
- (d) any other information that the Authority may reasonably require in relation to the calculation of any Employee Payments in respect of Project Co or any relevant Project Contractor or Sub-Contractor;

“Employee Payments” means any liability that has been reasonably incurred by Project Co arising as a result of termination of this Project Agreement under collective agreements, employment agreements or under any other agreements with employees of Project Co, including severance (whether accrued or not), vacation pay and sick pay accrued but excluding any Distribution;

“Project Contractor Breakage Costs” means the amount payable by Project Co to Operations Co under the terms of the Project Implementation Agreement or by Operations Co to a Project Contractor under the terms of a Project Contract as a direct result of the termination of the Project Implementation Agreement or such Project Contract as a consequence of the termination of this Project Agreement, including all cancellation fees, restocking costs and demobilization expenses, but reduced (without duplication) to the extent that:

- (a) Project Co, Operations Co, the Project Contractors and any Sub-Contractors fail to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by Project Co, Operations Co, the Project Contractors or the Sub-Contractors other than in the ordinary course of business and on commercial arm’s length terms;
- (c) such amount is a Distribution; and
- (d) such amount includes any loss of overhead or profit of Operations Co, the Service Provider or its Sub-Contractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set out in the Project Implementation Agreement, Services Contract or applicable Sub-Contract); and

“Project Implementation Costs” means the total costs, expenses and fees that have been incurred by or on behalf of Project Co in connection with the Project.

2. TERMINATION AT AUTHORITY’S OPTION OR FOR AUTHORITY EVENT OF DEFAULT

2.1 Calculation of Termination Payment

If the Authority terminates this Project Agreement pursuant to Section 2.1(a) or Project Co terminates this Project Agreement pursuant to Section 13, the Authority will pay to Project Co a Termination Payment which will be calculated as the aggregate amount, without duplication, of:

- (a) the Senior Debt as at the Termination Date, with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;
- (b) the Employee Payments and the Project Contractor Breakage Costs;
- (c) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Project Agreement;
- (d) any Insurance Receivables, if and to the extent Project Co has assigned them to the Authority; and
- (e) the aggregate amount for which the then issued and outstanding shares in Operations Co and any amounts outstanding under Junior Debt could have been sold for Fair Market Value on the date immediately before the Termination Date based on the assumption that there has been no default by the Authority, that the sale is on a going concern basis and that no restrictions exist on the transfer of equity capital;

LESS, to the extent it is a positive amount, the aggregate amount, without duplication, of:

- (f) the aggregate of all credit balances in any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favor of the Senior Secured Creditors;
- (g) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co will assign any such claims under the Project Contracts or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims;
- (h) the market value of any other assets and rights, including any undrawn performance security, of Project Co (other than those transferred to the Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred

in carrying out its obligations under this Project Agreement as at the Termination Date to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:

- (1) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (2) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;
- (i) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Secured Creditors to Project Co as a result of a prepayment under the Senior Financing Agreements;
 - (j) any amounts received by the Senior Secured Creditors (or on their behalf) on or after the Termination Date and before the Termination Payment Date as a result of enforcing any other rights or security the Senior Secured Creditors may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
 - (k) any other amounts that the Authority is entitled to set off or deduct pursuant to Section 9.11 of this Project Agreement.

To the extent that the assets and rights referred to in Section 2.1(h) are not realized and applied pursuant thereto, Project Co will, on payment of the amount due under this Section 2.1, assign such assets and rights to the Authority.

If the aggregate of the amount calculated above is less than the Senior Debt plus the amount referred to in (b) above, then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt plus the amount referred to in (b) above.

2.2 Notice to the Authority

As soon as practicable after termination of this Project Agreement by the Authority pursuant to Section 2.1(a) or by Project Co pursuant to Section 13, Project Co will, acting reasonably, notify the Authority of the Termination Payment claimed by Project Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up-to-date Financial Model and certificates from the Senior Secured Creditors as to the amounts owed to them. Project Co will provide to the Authority all such documentation and information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment, including Employee Information. The Authority may request any additional documentation or information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment claimed by Project Co, provided that provision of any such documentation or information shall not prevent the Authority from disputing the Termination Payment claimed by Project Co.

3. TERMINATION FOR PROJECT CO EVENT OF DEFAULT

3.1 Calculation of Termination Payment Prior to System Completion Date

If the Authority terminates this Project Agreement pursuant to Section 12.4 prior to the System Completion Date, the Authority will pay to Project Co a Termination Payment equal to the aggregate amount, without duplication, of:

- (a) the greater of:
 - (1) the documented Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date; and
 - (2) 80% of the Senior Debt outstanding on the Termination Date,

LESS, to the extent it is a positive amount, the aggregate amount, without duplication, of:

- (b) the aggregate of all credit balances in any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favor of the Senior Secured Creditors;
- (c) the market value of any other assets and rights, including any undrawn performance security, of Project Co (other than those transferred to the Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (1) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (2) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and
- (d) the total of all Direct Losses reasonably incurred by the Authority as a result of the termination, including all reasonable costs of services, materials and equipment required to bring the condition of the NG-KIH System to the standard it would have been in if Project Co had complied with its obligations to carry out and complete the Design, Construction and Services in accordance with its obligations under this Project Agreement as of the Termination Date.

If the aggregate of the amount calculated above is greater than the Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date, then the Termination Payment will be decreased so that it is equal to the Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date.

3.2 Calculation of Termination Payment After System Completion Date

If the Authority terminates this Project Agreement pursuant to Section 12.4 after the System Completion Date, the Authority will pay to Project Co a Termination Payment equal to the aggregate amount, without duplication, of:

- (a) the greater of:
 - (1) the documented Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date, less the value of the accrued amortization of such Project Implementation Costs, provided that:
 - (A) accrued amortization will be determined by calculating, using a straight line amortization schedule, the total amount accrued through the Termination Date; and
 - (B) in no event shall such amount be greater than the amount of the Project Implementation Costs actually incurred by or on behalf of Project Co, less accrued amortization on the Termination Date as shown on the Financial Model projections as of the Effective Date; and
 - (2) 80% of the Senior Debt outstanding on the Termination Date,

LESS, to the extent it is a positive amount, the aggregate amount, without duplication, of:

- (b) the aggregate of all credit balances in any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favor of the Senior Secured Creditors;
- (c) the market value of any other assets and rights, including any undrawn performance security, of Project Co (other than those transferred to the Authority pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (1) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (2) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and
- (d) the total of all Direct Losses reasonably incurred by the Authority as a result of the termination, including all reasonable costs of services, materials and equipment required to bring the condition of the NG-KIH System to the standard

it would have been in if Project Co had complied with its obligations to carry out and complete the Design, Construction and Services in accordance with its obligations under this Project Agreement as of the Termination Date.

If the aggregate of the amount calculated above is greater than the Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date, then the Termination Payment will be decreased so that it is equal to the Project Implementation Costs actually incurred by or on behalf of Project Co up to the Termination Date.

3.3 Notice to the Authority

As soon as practicable after termination of this Project Agreement by the Authority pursuant to Section 12.4, the Authority will notify Project Co of the Direct Losses reasonably incurred by the Authority as a result of the termination and Project Co will, acting reasonably, notify the Authority of the Termination Payment claimed by Project Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof. Project Co will provide to the Authority all such documentation and information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment. The Authority may request any additional documentation or information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment claimed by Project Co, provided that provision of any such documentation or information shall not prevent the Authority from disputing the Termination Payment claimed by Project Co.

3.4 Post-Termination Date Payment

If this Project Agreement is terminated in accordance with Section 12.4, during the period from the Termination Date to the date the Termination Payment is paid, the Authority will, on or before the later of:

- (a) 2 Business Days prior to each interest payment date under the Senior Financing Agreements; and
- (b) 3 Business Days after the Authority has received written notice from Project Co of the amount of interest payable by it on such interest payment date,

as an advance against the Termination Payment, pay to Project Co the interest payable on that interest payment date by Project Co to the Senior Secured Creditors in the normal course (which, for greater certainty, does not include breach or default circumstances) under the Senior Financing Agreements. The Authority may withhold payment under this Section 3.4 if the Authority has reasonable grounds to believe that the aggregate of that payment and all such previous payments would exceed the Termination Payment otherwise payable or the Availability Payments that would have been payable to Project Co had the Project Agreement not been terminated. All payments under this Section 3.4 will be deducted from the Termination Payment and any over-payment will be re-paid by Project Co no later than the Termination Payment Date.

4. NO-FAULT TERMINATION

4.1 Calculation of Termination Payment

If either the Authority or Project Co terminates this Project Agreement pursuant to Section 6.3, Section 6.4, Section 6.10, Section 8.4 or Section 8.6, the Authority will pay to Project Co a Termination Payment equal to the aggregate of:

- (a) the Senior Debt as at the Termination Payment Date, with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date;
- (b) the Employee Payments and the Project Contractor Breakage Costs;
- (c) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Project Agreement;
- (d) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt; and
- (e) the amount, if any, by which the amount of capital contributed to Operations Co by its equity investors exceeds the amount of all Distributions made by Operations Co to its equity investors,

LESS:

- (f) the amount of any Distributions other than those referred to in (d) and (e) above; and
- (g) any other amounts that the Authority is entitled to set off or deduct pursuant to Section 9.11 of this Project Agreement.

If the aggregate of the amount calculated above is less than the Senior Debt plus the amount referred to in (b) above, then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt plus the amount referred to in (b) above.

4.2 Notice to the Authority

As soon as practicable after termination of this Project Agreement by either the Authority or Project Co pursuant to Section 6.3, Section 6.4, Section 6.10, Section 8.4 or Section 8.6, Project Co will, acting reasonably, notify the Authority of the Termination Payment claimed by Project Co as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up-to-date Financial Model and certificates from the Senior Secured Creditors as to the amounts owed to them. Project Co will provide to the Authority all such documentation and information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment, including Employee Information. The Authority may request any additional documentation or information as may be reasonably required by the Authority to substantiate the amount of the Termination Payment claimed by Project Co, provided that provision of any such documentation or

information shall not prevent the Authority from disputing the Termination Payment claimed by Project Co.

5. ADJUSTMENTS AND DISPUTES

5.1 Time Related Adjustments

The parties acknowledge and agree that the calculation of any Termination Payment pursuant to Section 2, 3 or 4 of this Schedule 9 is as of an estimated Termination Payment Date and that such estimated date may not be the actual Termination Payment Date for reasons which may include the existence of a Dispute. The parties will act reasonably in adjusting the amount of such calculated Termination Payment to reflect the actual Termination Payment Date.

5.2 Senior Debt

The Authority will be entitled to rely on one or more certificates of officers of the Senior Secured Creditors or their agent(s) as conclusive evidence of the amount of the Senior Debt. The receipt of this amount by Project Co, the Senior Secured Creditors or their agent(s) will discharge the Authority's obligation to pay any portion of compensation due to Project Co that is attributable to the Senior Debt.

5.3 Disputes

If:

- (a) the Authority does not agree with Project Co's determination of the Termination Payment under Section 2, 3 or 4 of this Schedule 9, the Authority may, within 30 days of the notice referred to in Section 2.2, 3.3 or 4.2 of this Schedule 9, as the case may be, refer the matter to the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet; or
- (b) Project Co does not agree with the Authority's determination of the Direct Losses reasonably incurred by the Authority as a result of the termination under Section 3 of this Schedule 9, Project Co may, within 30 days of the notice referred to in Section 3.3 of this Schedule 9 refer the matter to the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet.

If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in (a) or (b) above, as applicable, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Payment as of the estimated Termination Payment Date.

6. PAYMENTS

6.1 Termination Payment Date

Subject to Section 14.1 of this Project Agreement, the Termination Payment Date for any Termination Payment will be determined as follows:

- (a) if the amount thereof is agreed to by the Authority and Project Co, the earliest of:
 - (1) the date advised by the Authority; and
 - (2) 30 days after such agreement is reached; or
- (b) if the amount thereof is the subject of a Dispute, 30 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure, including, without limitation, the review of the Dispute by the Secretary of the Finance and Administration Cabinet,

provided that Project Co will not seek a judgment against the Authority in respect of any such Termination Payment unless such Termination Payment remains unpaid 365 days after the date of determination thereof. For clarity, the Authority will pay interest on any Termination Payment (as calculated prior to deducting any amounts pursuant to Section 3.4 of this Schedule 9) not paid when due in accordance with Section 9.14 of this Project Agreement.

6.2 Full Settlement

Any compensation paid by the Authority to Project Co under this Schedule 9 in the total amount owing hereunder or any agreement or determination that the Authority has no obligation to make any payment to Project Co under this Schedule 9 will be in full and final settlement of each party's rights and claims against the other for termination of this Project Agreement and any Project Contract, whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the date of termination of this Project Agreement (but not from the termination itself), to the extent any such liability has not already been taken into account in determining the Termination Payment; and
- (b) any liability of either party to the other that may arise after the date of termination of this Project Agreement (but not from the termination itself), including, for greater certainty, liabilities arising under the provisions of this Project Agreement which are intended by Section 17.10 of this Project Agreement to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.